

EXHIBIT D

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 15-CV-03411-GHW

4 - - - - -x
5 AU NEW HAVEN, LLC and TRELLEBORG COATED
6 SYSTEMS US, INC.,

7 Plaintiffs,

8 -against-

9 YKK CORPORATION, et al.,

10 Defendants.

11 - - - - -x

12 May 18, 2023

13 9:31 a.m.

14
15 CONTINUED VIDEOTAPED DEPOSITION of
16 JAMES J. DONOHUE, an Expert Witness in
17 the above-entitled action, held at Quinn,
18 Emanuel, Urkuhart & Sullivan, 51 Madison
19 Avenue, New York, New York at the above
20 time and place, taken before Dawn Matera,
21 a Certified Shorthand Reporter and Notary
22 Public of the State of New York.

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 BRENNER, SALTZMAN & WALLMAN LLP</p> <p>4 Attorneys for Plaintiff</p> <p>5 271 Whitney Avenue</p> <p>6 New Haven, Connecticut 06511</p> <p>7 BY: BRIAN P. DANIELS, ESQ.</p> <p>8 bpdaniels@bswlaw.com</p> <p>9</p> <p>10 QUINN EMANUEL URQUHART & SULLIVAN LLP</p> <p>11 Attorneys for the YKK Defendants</p> <p>12 111 Huntington Avenue</p> <p>13 Suite 520</p> <p>14 Boston, Massachusetts 02199</p> <p>15 BY: HARVEY J. WOLKOFF, ESQ.</p> <p>16 harveywolkoff@quinnemanuel.com</p> <p>17</p> <p>18 BY: IMMANUEL FOSTER, ESQ.</p> <p>19 Immanuelfooster@quinneman</p> <p>20</p> <p>21 Also Present:</p> <p>22 Silvio Facchin, Legal Video Specialist</p> <p>23</p> <p>24 *</p> <p>25 *</p>	<p>1 My name is Silvio Facchin, I am</p> <p>2 a certified legal video specialist</p> <p>3 representing Veritext Texas, and the</p> <p>4 court reporter is Dawn Matera from the</p> <p>5 firm of Veritext Texas.</p> <p>6 I am not authorized to</p> <p>7 administer an oath. I am not related</p> <p>8 to any party in this action nor am I</p> <p>9 financially interested in the outcome.</p> <p>10 If there are any objections to</p> <p>11 proceeding, please state them at this</p> <p>12 time. Counsel and all present</p> <p>13 including remotely will now state</p> <p>14 their appearances and affiliations for</p> <p>15 the record.</p> <p>16 MR. WOLKOFF: Good morning. My</p> <p>17 name is Harvey Wolkoff. I am here</p> <p>18 together with my colleague Immanuel</p> <p>19 Foster. We are from the law firm of</p> <p>20 Quinn Emanuel. We represent the</p> <p>21 various YKK entities who are</p> <p>22 defendants in this case.</p> <p>23 MR. DANIELS: Brian Daniels,</p> <p>24 Brenner, Saltzman & Wallman and I</p> <p>25 represent the plaintiffs.</p>
<p>1 THE VIDEOGRAPHER: Good morning.</p> <p>2 We are now going on the record. The</p> <p>3 time is 9:31 a.m. Please note that</p> <p>4 the microphones are sensitive and may</p> <p>5 pick up whispering and private</p> <p>6 conversations. Please mute your</p> <p>7 phones at this time. Audio and video</p> <p>8 recording will continue to take place</p> <p>9 unless all parties agree to go off the</p> <p>10 record.</p> <p>11 This is media unit number 1 of</p> <p>12 the video-recorded deposition of James</p> <p>13 Donohue, volume II, taken by counsel</p> <p>14 for the defendants in the matter of AU</p> <p>15 New Haven, LLC and Trelleborg Coated</p> <p>16 Systems U.S., Inc. versus YKK</p> <p>17 Corporation, et al.</p> <p>18 This is filed in the United</p> <p>19 States District Court, Southern</p> <p>20 District of New York. The case number</p> <p>21 is 15-CV-03411-GHW.</p> <p>22 The location of the deposition</p> <p>23 is Quinn Emanuel Urquhart and</p> <p>24 Sullivan, LLP located at 51 Madison</p> <p>25 Avenue, New York, New York.</p>	<p>1 THE VIDEOGRAPHER: Will the</p> <p>2 court reporter please swear in the</p> <p>3 witness.</p> <p>4 JAMES J. DONOHUE,</p> <p>5 The Witness herein, having first</p> <p>6 been duly sworn by the Notary Public, was</p> <p>7 examined and testified as follows:</p> <p>8 MR. WOLKOFF: Good morning,</p> <p>9 Mr. Donohue. I would like to start by</p> <p>10 having your supplemental expert report</p> <p>11 submitted on March 28th, 2023 marked</p> <p>12 as Donohue Exhibit 12 for</p> <p>13 identification.</p> <p>14 (Donohue Exhibit 12,</p> <p>15 supplemental expert report submitted</p> <p>16 on March 28th, 2023 was so marked for</p> <p>17 identification, as of this date.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. WOLKOFF:</p> <p>20 Q. Placing in front of you what we</p> <p>21 had marked as Exhibit 12 for</p> <p>22 identification.</p> <p>23 MR. DANIELS: Sorry, do I have a</p> <p>24 copy?</p> <p>25 Q. Placing in front of you what we</p>

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2 (Pages 260 - 263)

<p>1 marked as Exhibit 12 for identification, 2 do you recognize this as your 3 supplemental expert report in this matter 4 dated March 28th, 2023? 5 A. I do. 6 Q. Is there anything you want to 7 change in this report? 8 A. I believe there was one or two 9 schedules that we sent afterwards with 10 certain edits, but that was it, to my 11 knowledge. 12 Q. Okay. Have you been qualified 13 to testify as an expert by any court or 14 in any arbitration or other body since 15 your prior deposition in this case in 16 September of 2017? 17 A. Yes. 18 Q. Which matters? 19 A. Several matters. More recently 20 there was an arbitration, a private 21 arbitration in April. There was a trial 22 last year. There was two other 23 arbitrations that year. And then after 24 that I need to look at my CV and go. But 25 there have been several since 2017.</p> <p style="text-align: right;">Page 264</p>	<p>1 that document. But my royalty opinion, 2 for example, was not stricken. 3 Q. But you did have some opinions 4 that were stricken in that case? 5 A. Anything about that document I 6 could not say. 7 Q. Is your answer yes? 8 MR. DANIELS: Objection. Asked 9 and answered. 10 A. I don't know if it said 11 stricken. I could not talk about that 12 document in that case. Anything in my 13 report about that document, I could not 14 talk about. 15 Q. And did you have opinions, 16 therefore, that you couldn't talk about 17 by court order? 18 A. I reported what those documents 19 said. So in that sense, yes. But again 20 my royalty opinion was provided in that 21 case. 22 Q. You opined that there were 23 approximately 65 million meters of YKK 24 laminated T8s, 9s and 10s sewn into 25 high-end outerwear garments during the</p> <p style="text-align: right;">Page 266</p>
<p>1 Q. Okay. Since your deposition in 2 this matter on September 20, 2017, has 3 your testimony or opinions been excluded 4 in whole or in part by any court or 5 arbitration, tribunal or any other 6 tribunal? 7 A. No. I've had documents and 8 things like that limited in evidence that 9 can't be brought in, but my testimony and 10 opinion has been allowed. 11 Q. You haven't had any portion of 12 your expert opinion struck by any court 13 or other tribunal? 14 A. I have had documents removed 15 and things that I can't talk about in 16 cases and things like that. But my 17 opinions in those cases were presented. 18 Q. What cases were those? 19 A. I am specifically referring to 20 a case involving Dali and CommScope. And 21 I recall certain documents or testimony 22 not being able to be discussed. 23 Q. But you're saying that none of 24 your opinions in that case were stricken? 25 A. Well, I couldn't talk about</p> <p style="text-align: right;">Page 265</p>	<p>1 time period in issue, correct? 2 A. Yes. 3 Q. And the time period in issue is 4 February 2009 through September 2019, 5 correct? 6 A. Depending on the claim, but 7 yes, that's the wider time period, 8 shorter for the U.S. 9 Q. For the U.S. the time period is 10 February of 2009 through September 2018, 11 correct? 12 A. Correct. 13 Q. If I refer to the relevant 14 period, though, you understand unless I 15 say otherwise, that it's February 2009 16 through September 30, 2019, correct? 17 A. I understand that's the damage 18 period applicable in this case. 19 Q. You've calculated damages in 20 connection with a but-for analysis based 21 on the claim that YKK should have sold 22 its customers Uretek laminated T4s and 23 T5s instead of its own laminated T8s, 9s 24 and 10s, correct? 25 A. That's a summary. But that's</p> <p style="text-align: right;">Page 267</p>

<p>1 essentially the claim but-for their sales 2 in the excluded market, "their" being YKK 3 and Uretek would have laminated those 4 sales. 5 Q. And you've calculated damages 6 based on the claim that YKK should have 7 sold its customers Uretek laminated 8 zippers instead of its own laminated 9 zippers for all 65 million meters of 10 high-end outerwear, correct? 11 A. Yes, all of them are included 12 for that relevant time period. 13 Q. Did you attempt to determine 14 whether in the real world that YKK could 15 have sold its customers 65 million meters 16 of Uretek laminated T4s and T5s rather 17 than its own laminated T8s, 9s and 10s? 18 A. Yes, I did consider that as 19 part of my but-for calculation. 20 Q. It's true that if YKK couldn't 21 sell a T4 or T5 to a customer or 22 customers, there would be no profit for 23 either YKK or Uretek, correct? 24 A. Not necessarily, because then 25 Uretek would be free to reach that market</p> <p style="text-align: right;">Page 268</p>	<p>1 A. In your hypothetical where 2 you're assuming they would not buy T4s 3 and 5s, it's circular. So if you're 4 assuming they would not buy them, they 5 would sell a T8 -- 6 Q. It's not a hypothetical. In 7 the real world, if YKK couldn't sell, was 8 unable to sell T4s and T5s to a customer 9 or customers, so instead sold that 10 customer T8s, 9s or 10s, then both YKK 11 and Uretek would make some money, 12 correct? 13 MR. DANIELS: Objection as to 14 form. It is a hypothetical. 15 A. Respectfully, that is a 16 hypothetical, because you're asking me to 17 assume that they can't sell T4s and 5s, 18 and they do sell a T8. But you are 19 correct, if they do not or refuse to sell 20 a T4 or 5 and sell a T8, they would only 21 get 3 cents. 22 Q. Did you say anything in your 23 report about determining whether YKK 24 could sell Uretek laminated T4s and T5s 25 to particular customers, sir?</p> <p style="text-align: right;">Page 270</p>
<p>1 in an alternative manner, if in your 2 hypothetical. 3 Q. Did Uretek ever attempt to do 4 that? 5 A. To my knowledge, Uretek was 6 always trying to work out this issue. 7 Q. So is the answer no? 8 A. They continued to work with YKK 9 -- 10 Q. Is the answer to my question 11 no? 12 A. Well, they didn't do it because 13 they were doing that. But they did not 14 do anything else, they continued to work 15 with YKK. 16 Q. Did YKK ever -- strike that. 17 Did Uretek ever attempt to do 18 that? 19 A. Not to my knowledge, they 20 continued to work with YKK. 21 Q. If YKK sold to customers who 22 wouldn't buy Uretek laminated T4s and 23 T5s, YKK laminated T8s, 9s and 10s 24 instead, then both Uretek and YKK would 25 make some money, correct?</p> <p style="text-align: right;">Page 269</p>	<p>1 A. In my report, are you limiting 2 it to my supplemental report? 3 Q. Yes. 4 A. Yes, for example, I talked 5 about the profits they would make if they 6 lowered their margins and sold at the 7 lower prices. 8 Q. Show me where in your reports, 9 in any of your reports, where you talked 10 about whether YKK could sell T4s or T5s 11 instead of T8s, 9s or 10s to particular 12 customers. 13 MR. DANIELS: I am sorry, did 14 you say in any of his reports? 15 MR. WOLKOFF: Yes. 16 MR. DANIELS: Do you have his 17 original one you can put in front of 18 him? 19 MR. WOLKOFF: Yes. 20 MR. DANIELS: And for this 21 question, do you want him to go page 22 by page? 23 MR. WOLKOFF: No, I would like 24 him to point it out. Presumably, he's 25 familiar with his reports.</p> <p style="text-align: right;">Page 271</p>

<p>1 A. So, for example, figure 7, I 2 calculate it by looking back at the 3 permitted global outerwear market, and I 4 show that YKK would sell T4s and 5s. I 5 look at the profits that they would make 6 on those sales. And I discuss that 7 profit calculation elsewhere in my 8 report.</p> <p>9 Q. But you don't say in that 10 figure 7 whether YKK could have sold T4s 11 and T5s to particular customers instead 12 of T8s, 9 and 10s, do you sir, 13 whether in the real world it could have 14 done that?</p> <p>15 A. I believe I do. My opinion in 16 this supplemental report talks about them 17 selling T4s and 5s instead. It 18 calculates that.</p> <p>19 Q. I am asking whether or not you 20 said anywhere in any of your reports that 21 YKK could have sold T4s or T5s in the 22 real world to these customers instead of 23 T8s, 9s and 10s?</p> <p>24 A. I do. I just showed you an 25 example where I am actually calculating,</p> <p style="text-align: right;">Page 272</p>	<p>1 have done that in the real world; do you, 2 sir?</p> <p>3 MR. DANIELS: Objection. Asked 4 and answered.</p> <p>5 A. No, I disagree. I consider the 6 significant demand for this patent. The 7 lack of alternatives. The fact that 8 Uretek was a 40-million meter supplier 9 for them. My analysis in section 9 of my 10 old report walks through that 11 calculation.</p> <p>12 Q. In your supplemental expert 13 report submitted on March 28th, 2023 you 14 assume that YKK could have sold Uretek 15 laminated T4s and T5s in lieu of YKK 16 laminated T8s, 9s and 10s, you do no 17 analysis of whether or not YKK could have 18 sold T4s and T5s to customers in the real 19 world; do you, sir?</p> <p>20 MR. DANIELS: Objection. Asked 21 and answered.</p> <p>22 A. I disagree.</p> <p>23 Q. Where do you do that? Where do 24 you do that?</p> <p>25 MR. DANIELS: Objection. Asked</p> <p style="text-align: right;">Page 274</p>
<p>1 my but-for calculation is selling a T4 or 2 T5 instead. In here, I do it at the T8 3 price, for example.</p> <p>4 Q. I am not asking you about your 5 calculations. I am asking you whether or 6 not you discuss anywhere in your report 7 whether YKK could sell T4s or T5s to 8 specific customers instead of T8s, 9s and 9 10s?</p> <p>10 MR. DANIELS: Objection. Asked 11 and answered repeatedly.</p> <p>12 A. I showed you the calculation -- 13 I could show you the profit calculations 14 that you asked back in my initial report 15 from June 7, 2017.</p> <p>16 Starting in section 9 of that 17 report I go through my lost profit 18 analysis where I talk about the factors 19 that lead me to conclude that the proper 20 calculation is lost lamination profits on 21 T4s and 5s.</p> <p>22 Q. You assume that YKK could have 23 sold Uretek laminated T4s and 5s in lieu 24 of YKK laminated T8s, 9s and 10s. You do 25 no analysis of whether or not YKK could</p> <p style="text-align: right;">Page 273</p>	<p>1 and answered.</p> <p>2 A. I pointed out my figures where 3 I do the calculations. I pointed out the 4 profit sections where I do the profit 5 calculation. There are other parts where 6 I analyze the fact that YKK was selling 7 T4 and 5s to their customers throughout 8 this time period. So there is things in 9 my report where I do talk about their 10 ability to sell those.</p> <p>11 Q. Did you say anything in your 12 report about a comparison of prices for 13 T4s and T5s compared to T8s, 9s or 10s or 14 to water-resistant zippers laminated by 15 other manufacturers during the relevant 16 period, sir?</p> <p>17 MR. DANIELS: Objection as to 18 form.</p> <p>19 A. I talk about what they would 20 sell it at in the but-for world. I do 21 have the actual prices in my report for 22 what was actually happening.</p> <p>23 Q. In the real world did you say 24 anything in your report about a 25 comparison of prices for T4s and T5s to</p> <p style="text-align: right;">Page 275</p>

<p>1 T8s, 9s, and 10s?</p> <p>2 A. In my report I analyze that</p> <p>3 data. But that is actual T4s and 5</p> <p>4 sales. Not the but-for T4s and 5 sales.</p> <p>5 Q. I am asking you about the real</p> <p>6 world, sir. Did you say anything about</p> <p>7 comparing the prices in the real world</p> <p>8 for T4s and T5s as compared to T8s, 9s</p> <p>9 and 10s?</p> <p>10 A. My analysis of the sales data</p> <p>11 captures that information. But those are</p> <p>12 actual sales, not but-for sales. In the</p> <p>13 but-for sales, as I show in my</p> <p>14 supplemental report, I assume would be at</p> <p>15 the T8 prices.</p> <p>16 Q. Did you say anything in your</p> <p>17 supplemental report about the prices in</p> <p>18 the real world for T8s, T9s or T10s as</p> <p>19 compared to laminated zippers</p> <p>20 manufactured by other third parties?</p> <p>21 A. I talk about the T8 prices in</p> <p>22 my report that were actually sold. The</p> <p>23 market demand that they actually</p> <p>24 achieved.</p> <p>25 Q. Did you talk about the prices</p> <p style="text-align: right;">Page 276</p>	<p>1 laminated by third parties; did you, sir?</p> <p>2 A. Again, that sales data isn't</p> <p>3 available in this record that there is</p> <p>4 spot information about it. But in my</p> <p>5 report I don't compare those to actual T4</p> <p>6 prices which were higher than T8s during</p> <p>7 the time.</p> <p>8 Q. Did you do -- strike that.</p> <p>9 Did you say anything in your</p> <p>10 report about complaints by YKK customers</p> <p>11 about the prices for Uretek laminated</p> <p>12 zippers in the real world?</p> <p>13 A. No, because that's the actual</p> <p>14 prices that were going on. Not the</p> <p>15 but-for scenario.</p> <p>16 Q. Did you say anything in your</p> <p>17 report about complaints by customers</p> <p>18 about long delivery times of Uretek</p> <p>19 laminated zippers?</p> <p>20 A. I don't discuss delivery times.</p> <p>21 I discuss it with Mr. Press. But I don't</p> <p>22 recall specifically talking about</p> <p>23 delivery times in my report.</p> <p>24 Q. Do you say anything in your</p> <p>25 report about comparing delivery times of</p> <p style="text-align: right;">Page 278</p>
<p>1 being charged by third parties for their</p> <p>2 water-resistant laminated zippers other</p> <p>3 than YKK or Uretek laminated zippers?</p> <p>4 A. I talked about the other</p> <p>5 claimed alternatives and I recognize that</p> <p>6 they were there, but YKK achieved the T8</p> <p>7 sales that it did, for example, at those</p> <p>8 prices.</p> <p>9 Q. But please answer my question.</p> <p>10 Did you lay out anywhere in your reports</p> <p>11 the prices being charged during the</p> <p>12 relevant period by third parties for</p> <p>13 their water-resistant laminated zippers</p> <p>14 as compared to Uretek laminated zippers</p> <p>15 or YKK laminated zippers?</p> <p>16 MR. DANIELS: Objection as to</p> <p>17 form.</p> <p>18 A. I don't believe I have sales</p> <p>19 data that I analyze for these other</p> <p>20 zippers that exist. So I don't believe</p> <p>21 that sales data is in my report.</p> <p>22 Q. You didn't lay out any</p> <p>23 comparisons in your report between the</p> <p>24 prices for Uretek laminated T4s and T5s</p> <p>25 as compared to water-resistant zippers</p> <p style="text-align: right;">Page 277</p>	<p>1 YKK laminated T8s, 9s and 10s as compared</p> <p>2 to Uretek laminated T4 and T5s?</p> <p>3 A. I don't specifically discuss</p> <p>4 delivery times, I discuss the but-for</p> <p>5 transactions that would have occurred.</p> <p>6 Q. Do you discuss anything in your</p> <p>7 report about the delivery times for</p> <p>8 water-resistant laminated zippers by</p> <p>9 third parties as compared to Uretek</p> <p>10 laminated T4s and T5s?</p> <p>11 A. My report doesn't discuss</p> <p>12 delivery times, it analyzes the but-for</p> <p>13 scenario, which would be Uretek making</p> <p>14 those sales.</p> <p>15 Q. Do you talk anything in your</p> <p>16 report about customers either switching</p> <p>17 or threatening to switch to zippers</p> <p>18 laminated by third parties as opposed to</p> <p>19 continuing to purchase T4s and T5s?</p> <p>20 A. I don't recall that as I sit</p> <p>21 here.</p> <p>22 THE WITNESS: Can you read that</p> <p>23 back, please?</p> <p>24 [The requested portion of the</p> <p>25 record was read back as follows:</p> <p style="text-align: right;">Page 279</p>

<p>1 "Question: Do you talk anything 2 in your report about customers either 3 switching or threatening to switch to 4 zippers laminated by third parties as 5 opposed to continuing to purchase T4s 6 and T5s?"] 7 A. I don't recall that specific 8 fact set being discussed in my report. 9 Q. Do you recall discussing at all 10 in your report any quality issues that 11 either YKK or YKK customers had or 12 claimed to have with Uretek laminated 13 zippers? 14 A. I recall looking at capacity 15 which would include the ability to make 16 those sales. But I don't talk about 17 specific instances of quality issues and 18 things like that. 19 Q. Listen to my question, please. 20 I am not talking about capacity. We will 21 get to that later. 22 Do you talk anywhere in your 23 reports about quality issues that either 24 YKK or YKK customers had or claimed to 25 have with Uretek laminated T4s and T5s?</p> <p style="text-align: right;">Page 280</p>	<p>1 about that. 2 Q. Can you answer the question I 3 asked, please? We can have it read back 4 if you want. 5 A. Thank you. 6 MR. WOLKOFF: Can you read it 7 back, please? 8 [The requested portion of the 9 record was read back as follows: 10 "Question: Listen to my 11 question, please. I am not talking 12 about capacity. We will get to that 13 later. 14 "Do you talk anywhere in your 15 reports about quality issues that 16 either YKK or YKK customers had or 17 claimed to have with Uretek laminated 18 T4s and T5s?"] 19 A. Not specifically in that 20 manner. Just in general about them being 21 a supplier for many years for millions of 22 meters. 23 Q. Did you do any review or take 24 into account customer complaints about 25 the quality of T4s and T5s as compared</p> <p style="text-align: right;">Page 282</p>
<p>1 MR. DANIELS: I just want to 2 make a substantive objection. It 3 sounds -- I am letting it go for a 4 little while, but it sounds like you 5 are rehashing the stuff that was in 6 his original report that is not in his 7 supplemental report. And that is 8 outside the scope of these permitted 9 depositions and the court orders. 10 And so I am have been letting it 11 go for a little while, but I am just 12 going to give you a standing objection 13 that stuff related to the original 14 report that was already covered in 15 prior depositions and that has not 16 changed, I have a standing objection 17 to those questions. 18 MR. WOLKOFF: Well, that's the 19 point, isn't it, that despite the 20 jury's verdict, this witness has not 21 changed his opinions and continues to 22 rely on the same types of information, 23 but not taken into account the jury's 24 verdict. That's our point here. And 25 I am entitled to question this witness</p> <p style="text-align: right;">Page 281</p>	<p>1 with YKK laminated T8s, 9s and 10s or 2 compared to water-resistant zippers 3 laminated by other manufacturers during 4 the relevant time period? 5 MR. DANIELS: Objection to form. 6 There is also a motion in limine 7 pending on this topic. 8 A. I did not specifically discuss 9 complaints. I just discussed their 10 ability to be a supplier and their 11 history of millions of meters and many 12 years of being a supplier. 13 Q. Did you identify any 14 third-party manufacturer of 15 water-resistant laminated zippers in your 16 reports, sir, during the relevant time 17 period, any competitors? 18 A. No, I am not aware of an 19 acceptable alternative, so I haven't 20 identified any competitors. 21 Q. So you haven't, right? 22 A. I don't recall listing one. 23 There is none to my understanding that 24 would be acceptable in this industry to 25 replace these sales. So I have not named</p> <p style="text-align: right;">Page 283</p>

<p>1 another one. 2 Q. You're an accountant, correct? 3 A. I am a CPA, yes. 4 Q. You're not someone who is 5 familiar with the garment industry, 6 correct? 7 A. I am not a, like a high-end 8 outerwear expert, no, a garment expert. 9 Q. And you're not an expert on 10 waterproof zippers; are you? 11 A. I am not. 12 Q. Do you talk at all in your 13 reports about the price being charged by 14 third-party competitors making 15 water-resistant laminated zippers as 16 compared to Uretek laminated T4s and T5s? 17 MR. DANIELS: Objection. Asked 18 and answered. 19 A. As I mentioned before, I assume 20 the same price, so I am talking about the 21 price that would be charged in the 22 but-for world. 23 Q. Do you talk anywhere about the 24 price being charged, sir, by third-party 25 competitors for water-resistant laminated</p> <p style="text-align: right;">Page 284</p>	<p>1 Q. Did you make any such attempt? 2 A. Not to my knowledge. 3 Q. To your knowledge did anybody? 4 A. Not to my knowledge. 5 Q. Did you or to your knowledge 6 anyone else communicate with any YKK 7 customers and ask them if they would have 8 purchased T4s and T5s during the relevant 9 time period as opposed to purchasing T8s, 10 9s and 10s or water-resistant zippers 11 laminated by other manufacturers? 12 A. I did not reach out and talk 13 about YKK customers in this private 14 litigation, no. 15 Q. Did you talk to any zipper 16 customers about anything in connection 17 with your work? 18 A. I did not reach out in a 19 private litigation and talk to them. 20 There was a legal channel for getting the 21 data from them which we did get and that 22 process went out and I got data from it. 23 Q. What is the private litigation 24 that you're referring to? This is a 25 public litigation.</p> <p style="text-align: right;">Page 286</p>
<p>1 zippers as compared to the prices being 2 charged during the relevant time period 3 for T4s and T5s? 4 A. I don't -- there is no sales 5 data to discuss that. I cite to some 6 one-off documents that cite prices and 7 comparisons and things of that nature 8 when reaching the conclusion that YKK 9 would sell into that market at the T8 10 price, and I reference those documents. 11 But there is no sales data about these 12 competitive zippers in question. 13 Q. You mean you have no sales data 14 to review, correct? 15 A. I don't have sales data about 16 those. I have some one-off pieces of 17 paper that show some prices and I do cite 18 those. I think I cite a presentation or 19 two. 20 Q. Do you know whether or not 21 plaintiffs made any attempt to obtain 22 such sales data from third-party 23 water-resistant zipper manufacturers of 24 laminated zippers? 25 A. Not to my knowledge.</p> <p style="text-align: right;">Page 285</p>	<p>1 A. Well, it's public to some 2 extent. But I have not gone out and 3 talked to anyone besides the proper 4 channels of getting subpoenas and getting 5 data from them. 6 Q. Did you ask the plaintiffs to 7 do that? 8 A. To do that meaning "sales 9 data"? 10 Q. Did you ask the plaintiffs to 11 do that? 12 A. To get sales data? Yes, I did. 13 Q. And they didn't do it? 14 A. I think we are talking past 15 each other. 16 MR. DANIELS: Objection to form. 17 Q. Okay. You understand my 18 question. Did you -- 19 MR. DANIELS: Objection. 20 Q. Did you ask the plaintiffs to 21 get sales data from third-party 22 manufacturers of laminated zippers, that 23 is from competitors, in this industry, 24 sir? 25 A. I answered that question before</p> <p style="text-align: right;">Page 287</p>

<p>1 and I said not to my knowledge, no. 2 Q. Did you or to your knowledge 3 anyone communicate with any customers to 4 ask them if they were willing to purchase 5 T4s and T5s as opposed to water-resistant 6 zippers laminated by third-parties 7 despite higher prices? 8 A. I did not talk to YKK's 9 customers. 10 Q. Did you or to your knowledge 11 anyone communicate with any customers to 12 ask them if they were willing to purchase 13 T4s and T5s as opposed to water-resistant 14 zippers laminated by others, despite 15 longer delivery times? 16 MR. DANIELS: Objection as to 17 form. 18 A. As I answered before, I have 19 not spoken to YKK's customers. 20 Q. Did you have any information 21 that you included in your reports about 22 customers willing to purchase T4s and T5s 23 as opposed to water-resistant zippers 24 laminated by others, despite higher 25 prices?</p> <p style="text-align: right;">Page 288</p>	<p>1 MR. DANIELS: -- many times. 2 Q. Do you have any information 3 that you included in your reports during 4 the relevant period about customers 5 willing to purchase T4s and T5s as 6 opposed to water-resistant zippers 7 laminated by others, despite higher 8 prices? 9 MR. DANIELS: Objection to form. 10 Objection. Asked and answered. 11 A. As I just answered, there is 12 evidence that the T4 and 5 was being 13 purchased and there is evidence that 14 there is a market for it with the T8 15 pricing. So, yes, I have looked at that 16 and that, of course, is in a market with 17 those competitors. 18 Q. And that's that small amount of 19 T4s and T5s that you talk about in figure 20 10, I believe, in your supplemental 21 report? 22 A. In the actual, it is. But in 23 the actual world, it is also \$500 million 24 of zipper demand that was achieved 25 despite those competitors.</p> <p style="text-align: right;">Page 290</p>
<p>1 MR. DANIELS: Objection as to 2 form and objection. Asked and 3 answered. 4 A. Yes. 5 Q. Where do you have that, sir? 6 A. I have the history of these 7 customers buying T4s and T5s at higher 8 prices in the past and also I have sales 9 data from YKK showing that some customers 10 continued to do that. 11 Q. A very small amount, as you 12 point out, of customers continued to buy 13 T4s and T5s during the relevant period, 14 correct? 15 A. In the actual world, in the 16 face of T8 being priced lower, yes, T8 17 was available lower at the time. 18 Q. Do you have any information 19 that you included in your reports about 20 customers willing to purchase T4s and T5s 21 as opposed to zippers laminated by 22 others? 23 MR. DANIELS: Objection. Asked 24 and answered -- 25 MR. WOLKOFF: Strike that.</p> <p style="text-align: right;">Page 289</p>	<p>1 Q. Your opinions are based on the 2 but-for world; is that correct? 3 A. Well, they are based on the 4 but-for world. And they also consider 5 what actually happened as part of that, 6 because you're comparing the two. 7 Q. You didn't consider anywhere in 8 your report longer delivery times or 9 purported longer delivery times for T4s 10 and T5s than other water-resistant 11 laminated zippers; did you? 12 MR. DANIELS: Objection to form. 13 A. I analyzed whether they could 14 make the sale. I didn't talk 15 specifically about lead times in my 16 report. I talked to Mr. Press about it. 17 YKK had a demonstrated history of using 18 Uretek as a supplier. 19 Q. I am talking about in your 20 report, sir, in your report, you didn't 21 say anything about customers willing to 22 purchase T4s and T5s as opposed to 23 water-resistant zippers laminated by 24 others despite higher prices -- 25 MR. DANIELS: Objection as to</p> <p style="text-align: right;">Page 291</p>

<p>1 form.</p> <p>2 Q. -- for the T4s and T5s?</p> <p>3 MR. DANIELS: Objection, asked</p> <p>4 and answered.</p> <p>5 A. When you say anything, I</p> <p>6 did. I looked at the market for these</p> <p>7 zippers. I saw the demand. I looked at</p> <p>8 the actual prices.</p> <p>9 Q. Did you anywhere in your</p> <p>10 reports compare that these are the prices</p> <p>11 for T4s and T5s being charged during the</p> <p>12 relevant period, and that these are the</p> <p>13 prices being charged by third-party</p> <p>14 water-resistant laminating manufacturers?</p> <p>15 MR. DANIELS: Objection, asked</p> <p>16 and answered.</p> <p>17 A. As I said before, I don't have</p> <p>18 data to compare those things. I have</p> <p>19 some one-off documents that I cite in my</p> <p>20 report. But I don't have sales data from</p> <p>21 those competitors to compare.</p> <p>22 Q. Do you include in your report</p> <p>23 any information about these are the</p> <p>24 delivery times for water-resistant</p> <p>25 laminated zippers by third parties as</p> <p style="text-align: right;">Page 292</p>	<p>1 and answered.</p> <p>2 A. I do. I discuss that the T8s</p> <p>3 were made in a market that had these</p> <p>4 competitors. And I also knew what the T4</p> <p>5 and T5 prices were. My data shows that.</p> <p>6 Q. Did you say anywhere in your</p> <p>7 report what the prices were during the</p> <p>8 relevant time period for T8s, 9s and 10s,</p> <p>9 the actual prices in the real world?</p> <p>10 A. Yes.</p> <p>11 Q. Where?</p> <p>12 A. In my, for example, in my chart</p> <p>13 where I look at the \$500 million market.</p> <p>14 I look at the price -- I look at the</p> <p>15 meters and I look at the revenues for</p> <p>16 those.</p> <p>17 Q. Now, you relied on YKK's usage</p> <p>18 codes in trying to determine YKK's sales</p> <p>19 of outerwear, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And then you segregated the</p> <p>22 outerwear that was served to "functional</p> <p>23 customers" according to YKK's customer</p> <p>24 usage codes, correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 294</p>
<p>1 compared to the delivery times for Uretek</p> <p>2 laminated T4s and T5s?</p> <p>3 A. As I had mentioned this</p> <p>4 morning, I don't specifically discuss</p> <p>5 delivery times. I don't recall data on</p> <p>6 delivery times besides one-off documents.</p> <p>7 But I don't discuss delivery and lead</p> <p>8 times in my report.</p> <p>9 Q. Do you say anything in your</p> <p>10 report about these are the delivery times</p> <p>11 for YKK's T8s, 9s and 10s as compared to</p> <p>12 the delivery times for Uretek laminated</p> <p>13 T4s and T5s?</p> <p>14 A. As I've mentioned, I don't</p> <p>15 discuss specifically lead times in my</p> <p>16 report. I talked about it with</p> <p>17 Mr. Press. But I did not discuss that in</p> <p>18 my report.</p> <p>19 Q. Do you discuss anywhere in your</p> <p>20 reports these are the prices during the</p> <p>21 relevant time period being charged for</p> <p>22 T8s, 9s and 10s, as compared to the</p> <p>23 prices during the relevant time period</p> <p>24 being charged for T4s and T5s?</p> <p>25 MR. DANIELS: Objection. Asked</p> <p style="text-align: right;">Page 293</p>	<p>1 Q. And then to determine if the</p> <p>2 T8, 9 and 10 zippers were used in</p> <p>3 high-end outerwear you rely completely on</p> <p>4 David Cockrell's opinions of what is</p> <p>5 high-end outerwear and what is not,</p> <p>6 correct?</p> <p>7 A. Well, it's one part of the</p> <p>8 analysis, but it's the parts with the</p> <p>9 parts that you just went through, which</p> <p>10 is usage, segmentation, the use of T8s,</p> <p>11 9s and 10s, higher prices, things like</p> <p>12 that. But that is part of the analysis.</p> <p>13 Q. Well, after identifying or</p> <p>14 limiting sales to T8s, 9s and 10</p> <p>15 functional outerwear based on YKK's</p> <p>16 available data, you then rely on</p> <p>17 completely Mr. Cockrell's analysis of</p> <p>18 sample functional outerwear products and</p> <p>19 customers to determine the portion of</p> <p>20 that functional outerwear sales that were</p> <p>21 high-end outerwear, correct?</p> <p>22 A. Yes, I rely on his analysis to</p> <p>23 do that final step. I compared customer</p> <p>24 trends and things like that, but I did</p> <p>25 rely on his analysis to do that step.</p> <p style="text-align: right;">Page 295</p>

<p>1 Q. You would agree, sir, that by 2 2009 and '10 most of the manufacturers in 3 the garment industry had moved to Asia, 4 correct?</p> <p>5 A. I understand that most -- there 6 was a shift to Asia during that time 7 period, yes.</p> <p>8 Q. Can you identify any high-end 9 outerwear garment manufacturers that by 10 2010 didn't manufacture, substantially, 11 all of their high-end outerwear outside 12 of North America?</p> <p>13 MR. DANIELS: Objection. 14 Outside the scope of the report.</p> <p>15 A. I don't know. I know that 16 there was some -- I have even some 17 evidence of some manufacturing still 18 going on in North America. But I don't 19 know their names.</p> <p>20 Q. Can you identify any high-end 21 outerwear garment manufacturer that by 22 2010 didn't manufacture substantially all 23 of their high-end outerwear outside of 24 North America?</p> <p>25 MR. DANIELS: Objection to form.</p> <p style="text-align: right;">Page 296</p>	<p>1 MR. DANIELS: Objection to form.</p> <p>2 A. Correct. I know there is some 3 that do, but I can't identify them for 4 you because I don't know their names.</p> <p>5 Q. Did you talk at all in your 6 reports about any high-end outerwear 7 garment manufacturer that by 2010 was 8 still manufacturing high-end outerwear in 9 North America?</p> <p>10 A. I don't recall discussing that 11 in my report.</p> <p>12 Q. In your figure 4?</p> <p>13 A. Figure 4 in my supplemental 14 report?</p> <p>15 Q. In your supplemental report. 16 On page 13 you say that there 17 were 65,090,121 YKK laminated zippers 18 that were "Likely high-end outerwear 19 meters," correct, sir?</p> <p>20 A. Yes.</p> <p>21 Q. Can you identify even one of 22 those 65,090,121 meters that were sewn 23 into high-end outerwear garments, where 24 the high-end outerwear was manufactured 25 outside of Asia?</p> <p style="text-align: right;">Page 298</p>
<p>1 A. As I said, I don't know their 2 names. I know that there was high 3 performance manufacturing still going on 4 in North America. I don't know their 5 names.</p> <p>6 Q. Do you say anything in your 7 reports about, by the year 2010, 8 manufacturer of high-end outerwear still 9 going on in North America, sir?</p> <p>10 A. I don't recall discussing that 11 in my report.</p> <p>12 Q. Can you identify any high-end 13 outerwear garment manufacturer that by 14 2010 didn't manufacture, substantially, 15 all of its high-end outerwear in Asia?</p> <p>16 MR. DANIELS: Objection as to 17 form.</p> <p>18 A. Again, the same answer. I know 19 that there was some in North America. I 20 don't know their names as I sit here.</p> <p>21 Q. So the answer is no, you can't 22 identify any high-end outerwear or 23 garment manufacturer that by 2010 didn't 24 manufacture, substantially, all of its 25 high-end outerwear in Asia?</p> <p style="text-align: right;">Page 297</p>	<p>1 A. I can't specifically do that 2 for you; no, as I sit here.</p> <p>3 Q. Okay. In terms of delivery 4 time for the T4s and T5s, did you 5 familiarize yourself with the process 6 involved in creating water-resistant 7 Uretek laminated zippers and how long 8 that process took, sir?</p> <p>9 A. I recall visiting the plant and 10 talking with Mr. Press and others about 11 it, yes.</p> <p>12 Q. Okay. What was the process?</p> <p>13 A. In general, the zipper chain 14 was sent from Georgia, I believe, to 15 Connecticut and then Uretek would 16 laminate it and send it back to Georgia.</p> <p>17 Q. Do you know by what means the 18 zipper chain was sent from YKK's plant in 19 Georgia up to Uretek's plant in New 20 Haven?</p> <p>21 A. I think it varied, but I don't 22 recall. I think it varied. I think 23 Mr. Press noted that it might have varied 24 at times depending on certain things, but 25 I don't recall the details.</p> <p style="text-align: right;">Page 299</p>

<p>1 Q. You don't recall?</p> <p>2 A. I don't recall the details.</p> <p>3 Q. Do you recall generally how</p> <p>4 long?</p> <p>5 A. I don't recall how long as I</p> <p>6 sit here.</p> <p>7 Q. Okay. Do you recall how long</p> <p>8 on average it took for Uretek to laminate</p> <p>9 the zippers at its plant in New Haven?</p> <p>10 A. I don't recall those details</p> <p>11 now as I sit here.</p> <p>12 Q. Do you recall by what means the</p> <p>13 zippers after being laminated were sent</p> <p>14 to YKK's plant in Georgia?</p> <p>15 A. I think that varied, as well.</p> <p>16 But I don't specifically recall as I sit</p> <p>17 here.</p> <p>18 Q. And then for garment</p> <p>19 manufacturers in Asia, where were the</p> <p>20 laminated zippers sent from; do you know?</p> <p>21 A. I don't know if I understand</p> <p>22 your question. I guess it depends on</p> <p>23 which zipper they were buying.</p> <p>24 Q. Well, we are talking about the</p> <p>25 process of laminating T4s and T5s. Do</p> <p style="text-align: right;">Page 300</p>	<p>1 for YKK to laminate T8s, 9s and 10s and</p> <p>2 then ship them to Asia to manufacture?</p> <p>3 A. I recall -- I only know what</p> <p>4 some presentations said and I recall that</p> <p>5 being several weeks.</p> <p>6 Q. Do you know if the time period</p> <p>7 -- strike that.</p> <p>8 What presentation are you</p> <p>9 referring to?</p> <p>10 A. I recall a presentation, for</p> <p>11 example, from January of 2002.</p> <p>12 Q. So my questions are about the</p> <p>13 relevant time period, sir. Not January</p> <p>14 2002. Was YKK even laminating T8s, 9s</p> <p>15 and 10s in January of 2002; do you know?</p> <p>16 A. Not yet.</p> <p>17 Q. Not yet. So during the</p> <p>18 relevant time period do you know how long</p> <p>19 it took YKK to manufacture and then ship</p> <p>20 out to Asian manufacturers with regard to</p> <p>21 its T8s, 9s and 10s?</p> <p>22 A. Only from some documents that</p> <p>23 I've seen when the parties were</p> <p>24 negotiating or settling, there was some</p> <p>25 talk of this. But I just recall those</p> <p style="text-align: right;">Page 302</p>
<p>1 you know by what means the zippers, after</p> <p>2 being laminated by Uretek in New Haven</p> <p>3 and sent back down to YKK in Georgia they</p> <p>4 were sent to manufacturers in Asia?</p> <p>5 A. They would be -- I have seen</p> <p>6 ship. I think I have seen reference to</p> <p>7 air at times. But I think predominately</p> <p>8 ship.</p> <p>9 Q. Do you know how long that</p> <p>10 shipping took, on average?</p> <p>11 A. I don't have a date for you.</p> <p>12 Q. Do you know how long it took to</p> <p>13 have T4s and T5s laminated by Uretek and</p> <p>14 then shipped out to Asia on average, sir,</p> <p>15 during the relevant time period?</p> <p>16 A. I have seen estimates of weeks.</p> <p>17 But again, I have seen people talk about</p> <p>18 six, eight, 10. I have seen different</p> <p>19 numbers.</p> <p>20 Q. Do you say anything about that</p> <p>21 in your reports?</p> <p>22 A. I don't talk about the weeks in</p> <p>23 my report. No, I don't talk about</p> <p>24 specific weeks in my report.</p> <p>25 Q. Do you know how long it took</p> <p style="text-align: right;">Page 301</p>	<p>1 week ranges being in those documents.</p> <p>2 Q. Now you're recalling different</p> <p>3 documents than before?</p> <p>4 A. Yes.</p> <p>5 Q. What documents?</p> <p>6 A. I recall some documents where</p> <p>7 the parties, Uretek and YKK, were</p> <p>8 discussing resolution of this issue with</p> <p>9 litigation.</p> <p>10 Q. Can you specify what the</p> <p>11 documents are, sir, that you're referring</p> <p>12 to?</p> <p>13 A. There was, the parties talked</p> <p>14 multiple times. I don't have one in my</p> <p>15 head for you.</p> <p>16 Q. So you can't?</p> <p>17 A. I can't identify a particular</p> <p>18 document. I would have to -- I don't</p> <p>19 know if I cited that document.</p> <p>20 Q. Do you say anything in your</p> <p>21 report about the amount of time it took</p> <p>22 for YKK to manufacture its own laminated</p> <p>23 T8s, 9s and 10s and ship them out to</p> <p>24 Asian manufacturers and they received</p> <p>25 them?</p> <p style="text-align: right;">Page 303</p>

<p>1 A. I don't recall specifically 2 talking about that in my report. 3 Q. Do you know whether Uretek ever 4 fell behind and created a backlog with 5 regard to its T4s and T5s during the 6 relevant time period? 7 A. I had conversations with 8 Mr. Press about that. There was things 9 that went on during the process. I 10 recall something about that. 11 Q. What do you recall? 12 A. I recall them telling me that 13 that happened at times, but with specific 14 volume and things like that, all of those 15 issues were resolved and could be 16 resolved, especially with the added 17 volume. 18 Q. Do you recall being told that 19 Uretek had fallen behind in its 20 production of T4s and T5s during the 21 relevant time period and had created a 22 backlog for YKK? 23 MR. DANIELS: Objection as to 24 form. 25 A. I don't recall that specific</p> <p style="text-align: right;">Page 304</p>	<p>1 A. I believe it was at the plant. 2 Q. How long did you spend? 3 A. I was there for several hours. 4 Q. Did you ever take any notes of 5 what it is you say that Mr. Press told 6 you? 7 A. I don't believe I did. 8 Q. Did you say anything in your 9 reports about the importance of delivery 10 times to Asian garment manufacturers in 11 connection with their water-resistant 12 zipper purchasing decisions? 13 A. As I've mentioned a few times 14 this morning, I don't specifically talk 15 about delivery times in my report. 16 Q. Did you say anything in your 17 report about the importance of pricing to 18 Asian garment manufacturers in connection 19 with their water-resistant zipper 20 purchasing decisions? 21 A. Well, anything, in general as 22 my supplemental report points out, when I 23 do my profit allocation, I use the T8 24 example of the actual world, what 25 actually happened, showing the actual</p> <p style="text-align: right;">Page 306</p>
<p>1 instance. I recall Mr. Press talking 2 about the ability to make these sales 3 and, yes, with low volumes it takes 4 longer, with low inventory, things like 5 that, it could take longer. But I also 6 recall him telling me or testifying that 7 they were a good supplier and they always 8 resolved these issues. 9 Q. How many times did you speak 10 with Mr. Press in connection with your 11 work in this case? 12 A. Several times. 13 Q. Did you ever meet with him? 14 A. I did. 15 Q. Where did you meet with him? 16 A. I met with him in Connecticut. 17 Q. Where in Connecticut? 18 MR. DANIELS: I am going to 19 object again. These are all grounds 20 that were already covered the first 21 time and have nothing to do with the 22 jury verdict and given that Mr. Press 23 passed in 2017, he could not possibly 24 have changed how many times he met 25 with him, since his last deposition.</p> <p style="text-align: right;">Page 305</p>	<p>1 demand for water-resistant zippers. 2 Q. Did you say anything in your 3 reports about the importance of pricing 4 to Asian manufacturers in connection with 5 their water-resistant laminated zipper 6 purchasing decisions? 7 MR. DANIELS: Objection as to 8 form. 9 A. Well, again, when you say 10 anything, yes, because I've looked at the 11 market and used the actual price. So 12 recognizing the actual price, the actual 13 demand that did occur. 14 Q. Did you say anything in your 15 report about the factors that were 16 important to Asian garment manufacturers 17 in connection with their water-resistant 18 laminated zipper decisions, purchasing 19 decisions? 20 MR. DANIELS: Objection as to 21 form. 22 A. I don't know if I understand 23 your question. My report recognizes the 24 T8 pricing, for example, so that could 25 answer -- could be a yes to your</p> <p style="text-align: right;">Page 307</p>

<p>1 question, that I do talk about that.</p> <p>2 Q. Did you lay out in your report</p> <p>3 any of the factors that garment</p> <p>4 manufacturers took into account during</p> <p>5 the relevant time period in connection</p> <p>6 with their water-resistant laminated</p> <p>7 zipper purchasing decisions?</p> <p>8 MR. DANIELS: Objection as to</p> <p>9 form.</p> <p>10 A. Not in that specific nature.</p> <p>11 Again, whatever those were, those were</p> <p>12 considered -- I am assuming those were</p> <p>13 considered when the market bought those</p> <p>14 500 million dollars of meters. So</p> <p>15 whatever those issues were, the market</p> <p>16 considered them.</p> <p>17 Q. But you didn't lay out any of</p> <p>18 those issues, correct, in your report?</p> <p>19 MR. DANIELS: Objection to form.</p> <p>20 A. I do not go into detail about</p> <p>21 that, because again I have market data</p> <p>22 that shows that those manufacturers --</p> <p>23 Q. I am not talking about market</p> <p>24 data.</p> <p>25 MR. DANIELS: Let the witness</p> <p style="text-align: right;">Page 308</p>	<p>1 A. Correct. I talk about the</p> <p>2 non-infringing alternatives and the lack</p> <p>3 of an alternative zipper that is in this</p> <p>4 market, according to Mr. Cockrell.</p> <p>5 Q. No, sir. You just talked in</p> <p>6 your report about the absence of</p> <p>7 non-infringing acceptable alternative to</p> <p>8 zippers in paragraphs 20, 23 and 25 of</p> <p>9 your supplemental report, correct, sir?</p> <p>10 A. In my supplemental report, yes.</p> <p>11 I talk about non-infringing alternatives.</p> <p>12 Q. You're not an expert on garment</p> <p>13 manufacturer's decision-making on which</p> <p>14 water-resistant laminated zippers to</p> <p>15 purchase and which ones not to purchase,</p> <p>16 correct?</p> <p>17 A. Correct, I am not an industry</p> <p>18 expert.</p> <p>19 Q. I want to show you what's been</p> <p>20 marked in this case as DX 645.</p> <p>21 (Defendants' Exhibit 645,</p> <p>22 document Bates stamped YKK0703208 was</p> <p>23 previously marked for identification.)</p> <p>24 MR. WOLKOFF: It's a trial</p> <p>25 exhibit. I don't think we need to</p> <p style="text-align: right;">Page 310</p>
<p>1 answer the question.</p> <p>2 A. -- that shows that those</p> <p>3 manufacturers achieved those volumes at</p> <p>4 those prices.</p> <p>5 Q. I am not talking about market</p> <p>6 data. Do you lay out in any of your</p> <p>7 reports the factors that garment</p> <p>8 manufacturers took into account during</p> <p>9 the relevant time period in connection</p> <p>10 with their purchasing decisions with</p> <p>11 respect to water-resistant laminated</p> <p>12 zippers?</p> <p>13 MR. DANIELS: Objection as to</p> <p>14 form. Objection, asked and answered.</p> <p>15 A. Not in the detail that you are</p> <p>16 laying out. I lay out the market demand</p> <p>17 that we've talked about. Also, the</p> <p>18 billion dollar market that this was in</p> <p>19 general and the lack of alternatives. So</p> <p>20 I lay out those things, which would be</p> <p>21 important to that question.</p> <p>22 Q. Actually, you didn't talk about</p> <p>23 the lack of alternatives. You talked</p> <p>24 only about the lack of non-infringing</p> <p>25 acceptable alternatives, correct, sir?</p> <p style="text-align: right;">Page 309</p>	<p>1 mark these again.</p> <p>2 Q. You see that this is an e-mail</p> <p>3 string back in March of 2014, sir?</p> <p>4 A. Yes.</p> <p>5 Q. You've seen this e-mail string</p> <p>6 before, correct?</p> <p>7 (Witness reviews document.)</p> <p>8 MR. DANIELS: I am just going to</p> <p>9 object to this document on lack of</p> <p>10 authentication.</p> <p>11 A. I am not certain. I know I saw</p> <p>12 some things from Mr. Reed from this time</p> <p>13 period. I am not positive.</p> <p>14 Q. Didn't you review all of the</p> <p>15 exhibits marked as trial exhibits in</p> <p>16 connection with your work and your</p> <p>17 supplemental report in this matter, sir?</p> <p>18 A. I didn't necessarily review</p> <p>19 every one of them. I did searches on</p> <p>20 them. I've referenced what I've cited.</p> <p>21 Q. Didn't you say in your report</p> <p>22 that you had considered all of the trial</p> <p>23 exhibits in connection with preparing</p> <p>24 your supplemental report, sir?</p> <p>25 A. Yes, I had access to them. I</p> <p style="text-align: right;">Page 311</p>

<p>1 have done searches on them. I don't know 2 if I stopped and read this one. It looks 3 familiar. I just don't know if I read 4 645.</p> <p>5 Q. Directing your attention to 6 page 703216 of Trial Exhibit DX 645, do 7 you see that that's an e-mail written by 8 someone named Scott Jensen at YKK back on 9 March 7, 2014, sir?</p> <p>10 MR. DANIELS: Objection. Lack 11 of authentication.</p> <p>12 A. Yes. You mean the part under 13 "Hi Scott," -- Scott Jensen.</p> <p>14 Q. Under the part "Hi Shauna." Do 15 you see it?</p> <p>16 A. Yes, I see what it says.</p> <p>17 Q. And Mr. Jensen said, "We are 18 once again dealing with an unhappy 19 customer based off our 10CT4 chain lead 20 times."</p> <p>21 You understand the 10CT4 to be 22 one of the zippers laminated by Uretek, 23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Mr. Jensen went on to say,</p> <p style="text-align: right;">Page 312</p>	<p>1 particular statement with regard to this 2 customer in connection with your opinions 3 in this matter?</p> <p>4 A. As I said, I think I did know 5 of instances in the actual world where 6 due to the low volume and lack of 7 inventory, this would happen. But I 8 understand from Mr. Press that with the 9 volume and the inventory control that 10 would be going on if they had been using 11 Uretek.</p> <p>12 Q. Did you say anything about this 13 particular issue in your reports, sir?</p> <p>14 MR. DANIELS: Objection as to 15 form.</p> <p>16 A. Nothing with respect to 645. 17 Again, I don't recall citing this e-mail.</p> <p>18 Q. Did you say anything with 19 regard to customer complaints about long 20 delivery times for the T4 in your report, 21 sir?</p> <p>22 MR. DANIELS: Objection as to 23 form.</p> <p>24 A. I did not talk about customer 25 complaints, specifically, in my report.</p> <p style="text-align: right;">Page 314</p>
<p>1 "Based off the issues the customer had on 2 his last order of receiving material, he 3 placed a new order this week and received 4 an order confirmation of an ETC of eight 5 weeks out. His order is for 300 meters. 6 He can't believe it will take eight weeks 7 to get that item complete. He is ready 8 to cancel all of his orders and move his 9 business to Lenzip and other competitors, 10 if he doesn't get acknowledgment with an 11 improved lead time."</p> <p>12 I read that correctly?</p> <p>13 A. You did.</p> <p>14 Q. Did you consider that in 15 connection with your opinions in this 16 matter?</p> <p>17 A. That being this e-mail and 18 things that went on in the actual world. 19 Again, as I talked to Mr. Press, and also 20 recognizing the additional volume that 21 would have been going through the plant 22 at the time and the inventory management, 23 because this is during -- this is coming 24 during a time of very low volume.</p> <p>25 Q. Did you consider this</p> <p style="text-align: right;">Page 313</p>	<p>1 Q. Did you say anything about 2 delivery times being reduced with more 3 volume purportedly being reduced with 4 more volume in your report, sir?</p> <p>5 A. I did not say, I did not say 6 that. I talked about the volume in my 7 discussions with Mr. Press.</p> <p>8 Q. Any discussions you had with 9 anybody at Uretek was prior to the jury 10 verdict in this matter in January of 11 2023, correct?</p> <p>12 A. Correct.</p> <p>13 Q. You didn't go back and 14 communicate with anybody at Uretek after 15 the jury verdict in this matter about the 16 definition of high-end outerwear, 17 correct?</p> <p>18 A. I could not and I did not.</p> <p>19 Q. You couldn't talk -- when I say 20 Uretek, did you talk with anybody at the 21 two plaintiffs in this matter after the 22 jury's verdict in January of 2023?</p> <p>23 MR. DANIELS: And just to be 24 clear, I assume you're not asking 25 about conversations with counsel.</p> <p style="text-align: right;">Page 315</p>

<p>1 MR. WOLKOFF: Yes.</p> <p>2 A. No.</p> <p>3 Q. You see up above on page 214,</p> <p>4 the response about the complaint from the</p> <p>5 customer about the long lead time was, "I</p> <p>6 cannot improve the delivery at this time.</p> <p>7 As I said before, the standard lead time</p> <p>8 for Uretek chain is six to eight weeks."</p> <p>9 Do you see that, sir?</p> <p>10 A. I do.</p> <p>11 Q. And then up above, "Looks like</p> <p>12 we will be losing this order from the</p> <p>13 customer based on our long lead times."</p> <p>14 Do you see that, sir?</p> <p>15 A. I see that.</p> <p>16 Q. Did you take -- strike that.</p> <p>17 Did you say anything in your</p> <p>18 report about YKK losing sales of T4s and</p> <p>19 T5s with customers because of the lead</p> <p>20 times for delivery of the T4s and T5s</p> <p>21 during the relevant time period?</p> <p>22 A. I don't recall discussing that</p> <p>23 in my report. Again, I didn't discuss</p> <p>24 this e-mail in my report.</p> <p>25 Q. Do you recall discussing</p> <p style="text-align: right;">Page 316</p>	<p>1 higher prices or longer delivery times</p> <p>2 for T4s and T5s, YKK would still be able</p> <p>3 to sell T4s and T5s as opposed to T8s, 9s</p> <p>4 and 10s to its customers?</p> <p>5 MR. DANIELS: Objection as to</p> <p>6 form.</p> <p>7 A. I don't have that quoted</p> <p>8 sentence in my report.</p> <p>9 Q. Do you have that in sum and</p> <p>10 substance in words in your report, in</p> <p>11 words, sir?</p> <p>12 A. For example, I talk about the</p> <p>13 price. I do a calculation where I assume</p> <p>14 the price would be the same. So yes, I</p> <p>15 do.</p> <p>16 Q. Do you say anywhere in sum or</p> <p>17 substance, in words, that despite the</p> <p>18 higher price for T4s and T5s as compared</p> <p>19 to T8s, 9s and 10s or water-resistant</p> <p>20 zippers manufactured by third-parties, in</p> <p>21 my opinion YKK could still sell T4s and</p> <p>22 T5s to its customers?</p> <p>23 MR. DANIELS: Objection as to</p> <p>24 form.</p> <p>25 A. I already pointed you to the</p> <p style="text-align: right;">Page 318</p>
<p>1 anything about YKK losing customers</p> <p>2 because of the higher prices of T4s and</p> <p>3 T5s during the relevant time period?</p> <p>4 A. No.</p> <p>5 Q. Did you consider prices or</p> <p>6 delivery times in connection with the</p> <p>7 ability of YKK to sell Uretek laminated</p> <p>8 T4s and T5s to customers during the</p> <p>9 relevant time period?</p> <p>10 MR. DANIELS: Objection. Asked</p> <p>11 and answered.</p> <p>12 A. Yes.</p> <p>13 Q. Did you say anything in your</p> <p>14 report, specifically, that, or in sum and</p> <p>15 substance that YKK would be able to sell</p> <p>16 T4s and T5s to these customers despite</p> <p>17 the higher prices and longer lead times</p> <p>18 for those zippers?</p> <p>19 MR. DANIELS: Objection as to</p> <p>20 form.</p> <p>21 A. Yes. My calculations discuss</p> <p>22 using T4 and T5, and I have them</p> <p>23 achieving the sales.</p> <p>24 Q. Do you have any sentences in</p> <p>25 your reports that say despite purported</p> <p style="text-align: right;">Page 317</p>	<p>1 price sections and things like that,</p> <p>2 where I am selling them at that T4 and</p> <p>3 T5s at the T8 prices.</p> <p>4 Q. Sir, listen to my question.</p> <p>5 You know my question is about words. Do</p> <p>6 you say anything in words?</p> <p>7 MR. DANIELS: Objection. That's</p> <p>8 not true. You said sum or substance.</p> <p>9 That was the question. So objection</p> <p>10 as to form. And objection to</p> <p>11 badgering the witness.</p> <p>12 Q. In sum or substance in words.</p> <p>13 MR. DANIELS: Objection as to</p> <p>14 form.</p> <p>15 Q. Did you say anything in sum or</p> <p>16 substance, using words, that YKK would</p> <p>17 still be successful in selling T4s and</p> <p>18 T5s, despite higher prices for T4s and</p> <p>19 T5s than for other water-resistant</p> <p>20 laminated zippers on the market?</p> <p>21 MR. DANIELS: Objection as to</p> <p>22 form.</p> <p>23 A. Yes.</p> <p>24 Q. Point out where.</p> <p>25 A. My supplemental report, the</p> <p style="text-align: right;">Page 319</p>

<p>1 opinion, the ultimate opinion in my 2 supplemental report is that they could 3 achieve those sales at a lower margin due 4 to lamination costs from Urettek. 5 So in sum and substance and all 6 of the words that talk about that 7 opinion, is why I am saying that. 8 Q. You never analyzed the 9 difference in prices during the relevant 10 time period between the T4 and T5 and any 11 competitor manufacturer of 12 water-resistant laminated zippers? You 13 never did that in your reports; did you, 14 sir? 15 A. Because I've used the T8 price. 16 And those T8 prices were achieved with 17 whatever competition you're suggesting. 18 Q. Did you ever analyze the price 19 of T4s and T5s as compared with the 20 prices of water-resistant zippers 21 laminated by third-parties, that is 22 compared the actual prices in the real 23 world in your reports? 24 MR. DANIELS: Objection. Asked 25 and answered.</p> <p style="text-align: right;">Page 320</p>	<p>1 Q. Show me where you reference 2 competitor's prices for their 3 water-resistant zippers in your 4 supplemental report, please. 5 (Witness reviews document.) 6 A. So, for example, paragraph 23, 7 I talk about how YKK successfully sold 8 152 million meters, generated 495 million 9 in revenue despite any competition. 10 Q. That's not what I am asking 11 you, and you know it, sir. 12 MR. DANIELS: Objection. You're 13 badgering the witness. He's answering 14 the question that you asked. You just 15 don't like the answers. Don't tell 16 the witness that somehow he knows your 17 question and is intentionally ignoring 18 it. 19 Q. I am asking you, sir, where in 20 your supplemental report do you set out 21 the price being charged for 22 water-resistant laminated zippers by any 23 third-party manufacturer of the actual 24 prices? 25 MR. DANIELS: Objection as to</p> <p style="text-align: right;">Page 322</p>
<p>1 A. In my report, I have the T4 and 2 T5 prices which I provide. I do 3 reference documents that have these 4 competitive prices. But again, I use the 5 T8 price, for example, and that T8 price 6 was achieved in the actual world with 7 that competition. 8 Q. Okay. You're not answering the 9 question. 10 MR. DANIELS: Objection. He is 11 answering the question. 12 Q. Did you ever go through a 13 comparison in your reports of the actual 14 prices being charged for T4s and T5s in 15 the real world as compared with the 16 prices being charged by other 17 manufacturers of water-resistant 18 laminated zippers during the relevant 19 time period? 20 MR. DANIELS: Objection as to 21 form. Objection, asked and answered. 22 A. I can't answer the question 23 differently. I provide the T4 and T5 24 prices. I reference competitive pricing 25 and, of course, I use T8 pricing.</p> <p style="text-align: right;">Page 321</p>	<p>1 form. It's not the same question that 2 you previously asked. 3 You can answer that question. 4 A. And as I said before, I don't, 5 I think I reference a document that has 6 that. But I don't lay out those prices. 7 I am aware of them in my analysis. And I 8 don't have sales data about that. I am 9 aware of some pieces of paper. 10 Q. You don't say anything about -- 11 strike that. 12 You don't recall the actual 13 prices being charged during the relevant 14 time period by any manufacturer of 15 water-resistant laminated zippers; do 16 you, sir? 17 MR. DANIELS: Objection. Asked 18 and answered. 19 A. In a narrow sense, I do not 20 specifically cite the one-off examples 21 that I have seen. And I don't have sales 22 data. So that's not in here, that's 23 correct. 24 Q. Directing you back to 25 Defendants' Exhibit 645. The reference</p> <p style="text-align: right;">Page 323</p>

<p>1 on page 703214 to the standard lead time 2 for Uretek chain is six to eight weeks. 3 Is that consistent with your knowledge 4 that the standard delivery time during 5 the relevant time period for Uretek 6 laminated zippers T4s and T5s was six to 7 eight weeks? 8 A. Generally. I have seen other 9 ranges in other documents. 10 Q. Do you have any different time 11 period other than six to eight weeks set 12 forth anywhere in your report recognizing 13 you don't even have six to eight weeks 14 there? 15 A. I don't have six to eight weeks 16 or any other time period referenced in my 17 report, specifically. 18 Q. For a delivery time, you don't? 19 A. As I said before, I don't have 20 that six to eight-week figure, 21 specifically, in my report. 22 Q. I would like to show you now DX 23 56. 24 (Defendants' 56, document Bates 25 stamped YKK0044515 previously marked</p> <p style="text-align: right;">Page 324</p>	<p>1 Shibata, the subject is North Face? 2 A. I do see that. 3 Q. Do you see in the e-mail it 4 says, "North Face contractors have 5 already received black water-resistant 6 zippers from the Taiwanese competitor"? 7 A. I see that sentence. 8 Q. Do you know who the Taiwanese 9 competitor is that was being referred to 10 there? 11 A. I don't. 12 Q. Did you do anything to try to 13 determine who the competitors were for 14 water-resistant zippers during the 15 relevant time period? 16 MR. DANIELS: Objection as to 17 form. 18 A. I think I have seen some 19 documents that lay out some potential 20 competitors. I talked to Mr. Cockrell 21 about this as well. 22 Q. Who, to your knowledge, were 23 the competitors for water-resistant 24 zippers during the relevant time period, 25 competitors to the T4 and T5 Uretek</p> <p style="text-align: right;">Page 326</p>
<p>1 for identification.) 2 Q. I am placing in front of you 3 Defendants' Trial Exhibit 56. You have 4 seen this document before, correct? It's 5 an internal YKK e-mail chain from 6 September 1999? 7 MR. DANIELS: Objection. Lack 8 of foundation. No authentication. 9 A. I believe I have or at least 10 part of the chain. I don't know if I saw 11 the whole chain. 12 Q. Let me direct your attention to 13 page 44519. Do you see there there is an 14 e-mail from YKK's Jeff Donnelly to Bryan 15 Shibata, dated September 9th -- actually, 16 September 27, 2009, sir, during the 17 relevant time period? 18 MR. DANIELS: Hold on a second. 19 The relevant time period objection. 20 MR. WOLKOFF: Okay. Let me 21 restate it, because I think I got 22 mixed up on the date. 23 Q. Do you see on page 44519 there 24 is an e-mail from YKK's Jeff Donnelly 25 back on September 27th, 1999 to Bryan</p> <p style="text-align: right;">Page 325</p>	<p>1 laminated zippers? Can you name any? 2 A. I recall people suggesting that 3 Aqua-Tite was one. That Talon. Lenzip. 4 Riri. Coats. I have seen people say 5 these names as competitors. Again, I 6 don't agree that they are competitors, 7 but I have seen them mentioned in 8 documents. 9 Q. You're not an expert in who are 10 competitors or who weren't competitors 11 during the relevant time period for the 12 T4s and T5s, correct? 13 A. Well, I am relying on 14 Mr. Cockrell, the industry witness, in 15 part, yes, for that. But also, I am also 16 looking at the data and seeing that YKK 17 achieved these sales despite those 18 competitors. 19 Q. What sales? 20 A. They achieved 500 million in 21 outerwear sales. They achieved a billion 22 dollars in sales despite these 23 competitors. 24 Q. Of their own laminated zippers, 25 by far that was the vast majority of the</p> <p style="text-align: right;">Page 327</p>

<p>1 sales YKK was able to make, correct?</p> <p>2 MR. DANIELS: Objection as to</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. How much -- strike that.</p> <p>6 The amount in dollars of T4s or</p> <p>7 T5s that YKK was able to make during this</p> <p>8 relevant time period paled in comparison</p> <p>9 to its own sales of T8s, 9s and 10s,</p> <p>10 correct?</p> <p>11 MR. DANIELS: Objection as to</p> <p>12 form.</p> <p>13 A. In the actual market, yes, YKK</p> <p>14 was selling in the excluded markets and</p> <p>15 not using Uretek, so yes their sales were</p> <p>16 dramatically decreased.</p> <p>17 Q. On page 44516 of Exhibit 56, do</p> <p>18 you see there is an e-mail from</p> <p>19 Mr. Shibata at YKK to Mr. Sarumaru at YKK</p> <p>20 on September 28th, 1999.</p> <p>21 And in the fourth paragraph</p> <p>22 down it says, "The North Face said that</p> <p>23 the Taiwan manufacturers are offering a</p> <p>24 price 60 percent cheaper (\$1 or lower)</p> <p>25 than the 5CNT3 price in Asia."</p> <p style="text-align: right;">Page 328</p>	<p>1 Q. Let me place in front of you</p> <p>2 what we have marked previously as</p> <p>3 Defendants' Trial Exhibit 86.</p> <p>4 (Defendants' Exhibit 86,</p> <p>5 document Bates stamped YKK0679784,</p> <p>6 previously marked for identification.)</p> <p>7 Q. You see this is an e-mail from</p> <p>8 Michael Blunt to Bryan Shibata on</p> <p>9 February 2, 2001, sir --</p> <p>10 MR. DANIELS: Objection, lack of</p> <p>11 authentication.</p> <p>12 Q. -- at the top?</p> <p>13 A. I do see that.</p> <p>14 Q. Do you see he forwarded to</p> <p>15 Mr. Shibata an e-mail from Jeff Donnelly</p> <p>16 at YKK dated February 2, 2001?</p> <p>17 A. I see that.</p> <p>18 Q. Now, I asked you before if you</p> <p>19 knew who the competitor was in Taiwan</p> <p>20 that North Face was referencing, and</p> <p>21 actually in this e-mail it says that the</p> <p>22 competitor is a company in Taiwan going</p> <p>23 by the name of Perfect Footwear, correct?</p> <p>24 MR. DANIELS: Objection as to</p> <p>25 form.</p> <p style="text-align: right;">Page 330</p>
<p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Did you look at whether as</p> <p>4 early as 1999, if North Face was</p> <p>5 referencing a different laminating zipper</p> <p>6 company in Taiwan for at least some of</p> <p>7 its purchases because of a lower price?</p> <p>8 A. As I said, I think I've seen</p> <p>9 this e-mail before, so I was aware of</p> <p>10 that.</p> <p>11 Q. Did you talk about it in your</p> <p>12 report, at all?</p> <p>13 A. No, I did not, because I</p> <p>14 understand that YKK was able to achieve</p> <p>15 these sales despite this competition.</p> <p>16 Q. YKK, as we've already been</p> <p>17 through, was able to achieve only a</p> <p>18 minimal amount of sales of T4s and T5s</p> <p>19 during the time period, you set them out</p> <p>20 in your figure 10, correct?</p> <p>21 MR. DANIELS: Objection as to</p> <p>22 form.</p> <p>23 A. Correct, due to the competition</p> <p>24 from T8s at a lower price during this</p> <p>25 period, yes.</p> <p style="text-align: right;">Page 329</p>	<p>1 Q. It says, "I believe that this</p> <p>2 competitor is a company in Taiwan that</p> <p>3 goes by the name of Perfect Footwear,"</p> <p>4 correct?</p> <p>5 A. I see that in the second</p> <p>6 paragraph, correct.</p> <p>7 Q. You have read this e-mail</p> <p>8 before, Defendants' Exhibit 86, in</p> <p>9 connection with your work in this matter,</p> <p>10 correct?</p> <p>11 A. I believe I have seen this</p> <p>12 before.</p> <p>13 Q. And the e-mail goes on to say</p> <p>14 "North Face is sourcing a T4-type product</p> <p>15 from them and is paying much less than</p> <p>16 our price," correct?</p> <p>17 A. Yes, that's what it says.</p> <p>18 Q. Did you do any investigation of</p> <p>19 whether or not Perfect Footwear was a</p> <p>20 competitor during the relevant time</p> <p>21 period for water-resistant laminated</p> <p>22 zippers for high-end outerwear?</p> <p>23 A. In general, yes, I talked about</p> <p>24 competitors in general and I also</p> <p>25 recognized that YKK achieved these sales</p> <p style="text-align: right;">Page 331</p>

<p>1 despite them.</p> <p>2 Q. I am asking specifically about</p> <p>3 Perfect Footwear. Did you do any</p> <p>4 investigation to determine whether or not</p> <p>5 Perfect Footwear was a competitor for</p> <p>6 laminated water-resistant zippers during</p> <p>7 the relevant time period?</p> <p>8 A. I don't remember Perfect</p> <p>9 Footwear coming up in some of the</p> <p>10 reports, and things like that.</p> <p>11 Q. But you read this e-mail before</p> <p>12 your supplemental report here in which</p> <p>13 Perfect Footwear did come up as a</p> <p>14 competitor, correct?</p> <p>15 A. Correct.</p> <p>16 Q. But you said nothing about it</p> <p>17 in your report; did you?</p> <p>18 A. Because Perfect Footwear</p> <p>19 existed and YKK achieved those sales</p> <p>20 despite, apparently, a much lower price,</p> <p>21 so YKK achieved those sales at a higher</p> <p>22 price despite Perfect Footwear.</p> <p>23 Q. Did you say anything about</p> <p>24 Perfect Footwear in your report?</p> <p>25 A. My report does not mention the</p> <p style="text-align: right;">Page 332</p>	<p>1 standard.</p> <p>2 Q. Which competitors did you</p> <p>3 analyze or investigate?</p> <p>4 A. I didn't limit my questions to</p> <p>5 Mr. Cockrell about whether others that</p> <p>6 were a standard in the industry, for</p> <p>7 example, or others that were competing</p> <p>8 for these sales.</p> <p>9 Q. Can you identify another</p> <p>10 potentially competitive or competitor</p> <p>11 laminated zipper manufacturer for</p> <p>12 high-end outerwear that you investigated</p> <p>13 or reviewed to determine if they were</p> <p>14 competitors during the relevant time</p> <p>15 period?</p> <p>16 A. I mentioned the same earlier.</p> <p>17 I would have to go back and see if there</p> <p>18 are any other names, but again, I didn't</p> <p>19 limit my questions to Mr. Cockrell or my</p> <p>20 analysis of alternatives. And also I</p> <p>21 recognized in my supplemental report that</p> <p>22 these sales were made, despite infringing</p> <p>23 or non-infringing competition.</p> <p>24 Q. Did you investigate the</p> <p>25 presence of competitors for</p> <p style="text-align: right;">Page 334</p>
<p>1 word Perfect Footwear.</p> <p>2 Q. Did you do any investigation to</p> <p>3 try to locate any competitors in the real</p> <p>4 world for not, for water-resistant</p> <p>5 laminated zippers during the relevant</p> <p>6 time period?</p> <p>7 A. Yes, I looked at the absence of</p> <p>8 alternatives and talked with Mr. Cockrell</p> <p>9 about that in my first report and I</p> <p>10 mention it again in my second report.</p> <p>11 Q. I am not talking about</p> <p>12 non-infringing alternatives, just to be</p> <p>13 clear.</p> <p>14 Did you do any investigation or</p> <p>15 review of whether there were competitors</p> <p>16 in the real world or not for</p> <p>17 water-resistant laminated zippers during</p> <p>18 the relevant time period for high-end</p> <p>19 outerwear?</p> <p>20 MR. DANIELS: Objection to form.</p> <p>21 A. Yes. Because again, I talk</p> <p>22 about the success of this product and how</p> <p>23 it became a standard in the industry</p> <p>24 according to Mr. Cockrell, and he was not</p> <p>25 aware of something else that was a</p> <p style="text-align: right;">Page 333</p>	<p>1 water-resistant laminated zippers during</p> <p>2 the relevant time period by doing</p> <p>3 anything other than talking to</p> <p>4 Mr. Cockrell?</p> <p>5 A. Well, looking at the sales data</p> <p>6 and the success; so, yes, I did.</p> <p>7 Q. Anything else other than</p> <p>8 looking at the sales data and talking to</p> <p>9 Mr. Cockrell, that you did?</p> <p>10 A. Talked to Mr. Cockrell. Looked</p> <p>11 at the sales date.</p> <p>12 Q. Anything else, sir?</p> <p>13 A. Looked at the record.</p> <p>14 Q. Anything else, sir?</p> <p>15 A. The record itself, looking at</p> <p>16 documents like this.</p> <p>17 Q. Anything else?</p> <p>18 A. And I should include that I</p> <p>19 reviewed the opposing experts' reports,</p> <p>20 as well.</p> <p>21 MR. DANIELS: I object.</p> <p>22 Obviously, his report speaks for</p> <p>23 itself.</p> <p>24 Q. Apart from talking to</p> <p>25 Mr. Cockrell, did you actually do any</p> <p style="text-align: right;">Page 335</p>

<p>1 research on your own looking at the names 2 of competitors or potential competitors 3 in the water-resistant laminated zipper 4 space during the relevant time period? 5 A. I think I recall looking for 6 information about them and using the 7 record to kind and go and ask for them 8 about that. Yes, I did do some searches 9 and things like that. 10 Q. What did you do? 11 A. I tried to search for some of 12 the competitors and just sort of 13 understand if they had any market share 14 or had any size. 15 Q. And what did you determine? 16 A. I determined that this, that 17 the water-resistant YKK zipper was a 18 standard, was a success in the industry. 19 Q. Did you determine what YKK's 20 market share was during the relevant time 21 period for its laminated zippers? 22 A. I did not get market data that 23 sufficient to kind of analyze that. I 24 saw references within the record to what 25 YKK thought it was.</p> <p style="text-align: right;">Page 336</p>	<p>1 amounts. But they had been buying them 2 in more significant amounts prior to that 3 period. 4 Q. Did you have any data to 5 compare the amounts of T4s and T5s that 6 any of the YKK customers were purchasing 7 during the relevant time period as 8 compared to any purchases that they were 9 making of third-party water-resistant 10 laminated zipper manufacturers? 11 A. No granular data. But again, I 12 mentioned YKK would sometimes do one-off 13 comparisons of this, where they would 14 look at jackets and see how many were 15 AquaGuard or not. 16 Q. So you did not have any data to 17 compare the amounts of T4s and T5s that 18 any of the YKK customers were purchasing 19 during the relevant time period as 20 compared to any purchases they were 21 making of third-party water-resistant 22 laminated zippers from other 23 manufacturers? 24 A. Other than those one-off 25 instances where YKK was comparing how</p> <p style="text-align: right;">Page 338</p>
<p>1 Q. Did you actually make any 2 attempt to determine what YKK's market 3 share was for water-resistant laminated 4 zippers for high-end outerwear during the 5 period at issue? 6 A. I did not locate data that 7 would allow me to do that, other than the 8 record that showed what YKK thought it 9 was. 10 Q. So you didn't? 11 A. I did not find out another 12 market share. I used, I looked at YKK's 13 view of their market share. 14 Q. Do you have any evidence that 15 any of these YKK customers would have 16 purchased T4s and T5s, if YKK had refused 17 to sell them T8s, 9s and 10s for their 18 high-end outerwear during the relevant 19 time period? 20 A. Yes. 21 Q. What evidence do you have? 22 A. The fact that they were buying 23 T4s and 5s. 24 Q. In what amounts? 25 A. In the actual world in smaller</p> <p style="text-align: right;">Page 337</p>	<p>1 many AquaGuards there were, AquaGuards 2 meaning 8s, 9s, 10s, 4s and 5s. 3 Q. What documents were those, sir? 4 A. In some of the outdoor reports 5 they would sometimes count which 6 providers were providing using which 7 zippers and they would look at their 8 shares. 9 Q. Can you be anymore specific 10 than that? 11 A. Their outdoor research reports 12 that they would do each year. They would 13 tend to show, and sometimes they would 14 count the zippers and express a market 15 share, a sizable market share. 16 Q. But you had no data during the 17 relevant time period about purchases by 18 YKK customers of T4s and T5s or for that 19 matter any -- strike that. 20 You have no data during the 21 relevant time period of YKK customers' 22 purchases of T4 or T5 versus purchases 23 they may have been making from 24 third-party manufacturers of laminated 25 water-resistant zippers, correct?</p> <p style="text-align: right;">Page 339</p>

<p>1 MR. DANIELS: Objection. Asked 2 and answered. 3 A. Not aside from what I had just 4 mentioned, the one-off. And, of course, 5 I knew the T4 and T5 side of the 6 equation. I just don't have discovery 7 from the jacket manufacturers of what 8 else they were purchasing. 9 Q. You did have data from 13 10 so-called discovery customers of YKK, 11 correct? 12 A. Yes. 13 Q. Did you have data from those 13 14 discovery customers of other laminated 15 water-resistant zippers they were 16 purchasing from other manufacturers, sir? 17 MR. DANIELS: Objection as to 18 form. 19 Q. Was that asked for? 20 A. I don't believe that was asked 21 for. Not that I know. I understood that 22 that process was to request their use of 23 AquaGuard zippers. 24 Q. But you didn't have data, even 25 from the 13 discovery customers, of</p> <p style="text-align: right;">Page 340</p>	<p>1 purchases the North Face was making 2 during the relevant time period for 3 high-end outerwear from third-party 4 competitors in the marketplace? 5 A. I'm sorry, can you read that 6 back? 7 Q. Did you look at any data of how 8 much, if any, of its laminated zipper 9 meters the North Face was purchasing 10 during the relevant time period for its 11 high-end outerwear from third-party 12 competitors in the marketplace? 13 A. As I think I just answered, I 14 don't have data from North Face on their 15 other zipper purchases. 16 Q. Did you look at any data of how 17 much, if any, any of these customers were 18 making -- strike that. 19 Did you look at any data of how 20 much, if any, of its laminated zipper 21 purchases any of these other customers in 22 your figure 4 were making during the 23 relevant time period for high-end 24 outerwear from third-party competitors in 25 the marketplace?</p> <p style="text-align: right;">Page 342</p>
<p>1 purchases they were making in the 2 marketplace of third-party competitors 3 for water-resistant zippers for high-end 4 outerwear -- 5 MR. DANIELS: Objection as to 6 form. 7 Q. -- during the relevant time 8 period? 9 A. I don't have data directly from 10 those customers about their other 11 purchases of zippers. 12 Q. Was it asked for, to your 13 knowledge? 14 A. I don't know. I don't recall 15 seeing it in a subpoena. 16 Q. Did you ask for it? 17 A. I did not ask for it, no. 18 Q. You list on your figure 4 on 19 page 13 of your supplemental report, 20 North Face as having purchased the most 21 high-end outerwear zippers of all the 13 22 discovery customers, correct? 23 A. Yes. 24 Q. Did you look at any data of how 25 much, if any, of its laminated zipper</p> <p style="text-align: right;">Page 341</p>	<p>1 MR. DANIELS: Objection as to 2 form. 3 A. Again, I only have AquaGuard 4 discovery from them. Not third parties. 5 Q. The answer is no? 6 A. The answer is no, I don't have 7 third-party data from them regarding 8 non-AquaGuard purchases. 9 Q. But you did see documents in 10 the record reflecting some of those 11 customers indicating that they were 12 planning or deciding to switch over to 13 third-party manufacturers of laminated 14 zippers over from Uretek laminated 15 zippers and/or YKK laminated zippers, 16 correct? 17 A. Well, I saw a lot in the 18 record. I saw YKK switching them from T4 19 to T8, and I showed the documents you 20 showed me, as well. 21 Q. Can you answer my question, 22 please? 23 A. I thought I did. 24 Q. No, you didn't and you know you 25 didn't.</p> <p style="text-align: right;">Page 343</p>

<p>1 MR. DANIELS: Objection again. 2 Attorney Wolkoff, I am not going 3 to allow you to keep badgering the 4 witness like that. 5 Q. You did see some documents in 6 the record reflecting a number of the 7 customers indicating that they were 8 planning or deciding to switch over to 9 third-party manufacturers of laminated 10 zippers for purchasing Uretek laminated 11 and/or YKK laminated zippers, correct? 12 A. I saw instances of customers 13 talking about particular transactions. I 14 don't know about a number of customers. 15 I have seen the examples you showed me. 16 Q. Did you say anything about that 17 in your reports? 18 A. Again, I think I said I didn't 19 talk about these e-mails in my reports. 20 Q. Did you say anything about that 21 topic, that is, YKK customers planning or 22 actually switching from YKK laminated 23 and/or Uretek laminated zippers over to 24 zippers manufactured by third-party 25 laminators?</p> <p style="text-align: right;">Page 344</p>	<p>1 billion dollar product and the lack of an 2 industry alternative and the actual sales 3 of T4 and T5 to them before YKK started 4 using T8. 5 Q. Do you have any evidence 6 specific to Nike -- strike that. 7 Do you have any evidence 8 specific to North Face that if not 9 offered T8s, 9s and 10s the North Face, 10 in particular, would have purchased T4s 11 and T5s? 12 MR. DANIELS: Objection. Asked 13 and answered. 14 A. I don't know if it's specific. 15 It's specific to these customers because 16 that's what we've analyzed and that's 17 what they demonstrated by their 18 purchases. And they purchased a T8 that 19 is comparable to a T4. There is no 20 alternative. It's a success. There is 21 extensive demand for these zippers. They 22 were able to sell them for more than a 23 normal zipper and even more than a less 24 expensive water-resistant zipper. 25 Q. You say the T8s, 9s and 10s</p> <p style="text-align: right;">Page 346</p>
<p>1 MR. DANIELS: Objection as to 2 form. Objection, asked and answered. 3 A. I don't recall talking about 4 these e-mails or other instances like 5 this in my report. 6 Q. Did you talk at all in your 7 report about the -- strike that. 8 Did you specify in your reports 9 the market share of third-party 10 competitors for water-resistant zippers 11 for high-end outerwear during the 12 relevant time period? 13 MR. DANIELS: Objection as to 14 form. 15 A. I did not specify a third-party 16 market share like that in my report, no. 17 Q. Do you have any evidence 18 specific to North Face that if they 19 weren't offered T8s, 9s and 10s they 20 would have purchased T4s or 5s in the 21 real world during the relevant time 22 period? 23 A. Yes. 24 Q. What evidence? 25 A. The tremendous success of this</p> <p style="text-align: right;">Page 345</p>	<p>1 were comparable to the T4s and T5s. The 2 T8s, 9s and 10s had a lower price than 3 the T4s and 5s during the relevant time 4 period, correct? 5 A. In the actual world, yes, they 6 sold the T8s, 9s and 10s for less than 7 the T4s and 5s. 8 Q. The T8s, 9s and 10s had a 9 shorter delivery time to the Asian 10 outerwear manufacturers than the T4s or 11 5s, correct? 12 MR. DANIELS: Objection to form. 13 A. I don't have data on that. I 14 have seen reference to that. And that is 15 in the actual world of what was happening 16 in production. 17 Q. The answer is yes in the actual 18 world? 19 A. In the actual world all I have 20 is some documents that talk about that. 21 Q. So the answer is yes? 22 A. Those documents say that the 23 lead time is longer than a T8 lead time, 24 that's what those documents say. 25 Q. The lead time for a T4 is</p> <p style="text-align: right;">Page 347</p>

<p>1 longer than the lead time for a T8, 2 correct? 3 A. In the actual world given the 4 production levels that were occurring, 5 that's what it said. 6 Q. Did you look at any documents 7 comparing the quality of the T4s and T5s 8 to the quality of the T8s, 9s and 10s? 9 A. I looked at sales records that 10 say they sold 40 million of them over the 11 years. So they were comparable to my 12 understanding. 13 Q. Did you look at any records 14 comparing the quality of the T4s and T5s 15 with the quality of the T8s, 9s and 10s 16 during the relevant time period? 17 A. I just looked at it from a 18 sales data point of view. I didn't look 19 at a technical comparison. 20 Q. So the answer is no? 21 MR. DANIELS: Objection as to 22 form. 23 A. I looked at it from a sales 24 point of view. I did not look at it from 25 a technical comparison. I also assume</p> <p style="text-align: right;">Page 348</p>	<p>1 comparison of quality in your reports, 2 that is quality between the T4s, T5s as 3 compared to T8s, 9s and 10s or as 4 compared to competitors' water-resistant 5 laminated zippers during the relevant 6 time period; do you? 7 A. I don't talk or analyze quality 8 in my report. I recognize they are the 9 same and can be exchanged. 10 Q. You're saying that the T4s and 11 T5s during the relevant time period were 12 the same in quality to the T8s, 9s and 13 10s and competitive laminated zippers for 14 high-end outerwear, sir? 15 MR. DANIELS: Objection as to 16 form. 17 A. That is my working 18 understanding, that they were being used 19 for one purpose and they switched to 20 another. But they were comparable to the 21 customers. 22 Q. What did you do, if anything, 23 to look at the quality of the zippers as 24 compared to each other? Did you actually 25 look at any statements or look at any</p> <p style="text-align: right;">Page 350</p>
<p>1 they are both infringing, for example, so 2 they are comparable. 3 Q. Did you look at any customer 4 statements comparing the quality of the 5 T4 and T5s with the quality of the T8s, 6 9s and 10s during the relevant time 7 period? 8 A. I believe the record had some 9 communications, customers going back and 10 forth, talking about particular instances 11 or orders that talk about that. 12 Q. And what did they talk about, 13 sir? 14 A. Just talking about deliveries 15 and orders and things like that, 16 comparing them. 17 Q. Did you -- I am specifically 18 asking you, did you review any documents 19 in which customers compared the quality 20 of the T8s, 9s and 10s with the quality 21 of the T4s and T5s? 22 A. I don't recall if quality was 23 in those e-mails. I recall documents 24 about transactions. 25 Q. You don't talk about any</p> <p style="text-align: right;">Page 349</p>	<p>1 zippers? In fact, did you ever look at 2 -- let me ask you this. 3 Did you ever look at any T8s, 4 9s and 10s as they were manufactured 5 during the relevant time period and 6 compare them with T4s and T5s, the actual 7 zippers? 8 A. Not as they were manufactured. 9 I think I've seen samples during this 10 case. I have seen the T4 and T5 11 manufactured. But I haven't seen -- I 12 didn't travel to Japan and see the T8s. 13 Q. So you never looked at the T8s, 14 9s and 10s? 15 A. I have seen samples, but I did 16 not see that manufacturing process, 17 correct. 18 Q. Did you ever compare the 19 quality of the T8s, 9s and 10s with T4s 20 and T5s as they existed and were 21 manufactured during the relevant time 22 period? 23 A. Not from a technical point of 24 view. I am not a technical witness. I 25 looked at it from a sales point of view</p> <p style="text-align: right;">Page 351</p>

<p>1 and an economic point of view that they 2 were selling 40 million of these over the 3 time period. 4 Q. 40 million of what? 5 A. 40 million of T4s and T5s over 6 the history of the relationship. 7 Q. But the business began to shift 8 to Asia in 2006; didn't it? 9 A. That's been alleged and talked 10 about, yes. 11 Q. And the number of T4s and T5s 12 began to dwindle after the business 13 shifted to Asia, the garment 14 manufacturing business for high-end 15 outerwear, correct? 16 MR. DANIELS: Objection as to 17 form. 18 A. Well, it does, in the actual 19 world it does dwindle. YKK sells into 20 the excluded markets and yes T4s dwindle. 21 Q. T4s and T5s took a lot longer 22 to get to Asian manufacturers than when 23 those manufacturers were in North 24 America; isn't that correct? 25 MR. DANIELS: Objection as to</p> <p style="text-align: right;">Page 352</p>	<p>1 A. I don't know if it was after or 2 before, but YKK was charging a lower 3 price for T8. 4 Q. I am not asking about YKK, in 5 particular. 6 A. Okay. 7 Q. Okay? 8 A. Thank you. 9 Q. After the business shifted, the 10 garment manufacturing business shifted to 11 Asia, Asian garment manufacturers were 12 able to purchase water-resistant 13 laminated zippers for a much lower price 14 from Asia laminators than with respect to 15 Uretek laminated zippers in Connecticut, 16 correct? 17 MR. DANIELS: Objection as to 18 form. 19 A. I've seen documents that 20 suggest there is water-resistant zippers 21 of not comparable quality, for example, 22 or infringing, that are much less. And, 23 of course, YKK is an example of a 24 lamination in Asia, so that was less as 25 well. They charged less for that. I</p> <p style="text-align: right;">Page 354</p>
<p>1 form. 2 A. Again, I have seen documents 3 that say there is longer lead times. So 4 I don't have any granular data about lead 5 times. 6 Q. T4s and T5s cost a lot more 7 than water-resistant laminated zippers 8 cost for Asian manufacturers when buying 9 them from Asian laminated producers, 10 correct? 11 MR. DANIELS: Objection as to 12 form. 13 A. YKK was charging meaningfully 14 more for the T4 versus the T8, if that 15 answers your question. They were 16 charging more for that, yes. 17 Q. After the business of garment 18 manufacturing shifted to Asia, garment 19 manufacturers in Asia were able to 20 purchase laminated water-resistant 21 zippers for much cheaper prices than the 22 T4s and T5s manufactured in Connecticut, 23 correct? 24 MR. DANIELS: Objection as to 25 form.</p> <p style="text-align: right;">Page 353</p>	<p>1 recognize that. 2 Q. After the business of garment 3 manufacturing shifted to Asia, garment 4 manufacturers in Asia could purchase 5 laminated zippers for much lower prices 6 and with much lower delivery times than 7 with respect to T4s and T5s manufactured 8 and laminated in North America, correct? 9 MR. DANIELS: Objection as to 10 form. 11 A. I don't know. You showed me 12 documents that suggest the price was 13 lower, even before, even in 2002 or '99. 14 Q. So therefore, it's true 15 afterwards. What I am asking you, sir, 16 is after the business of garment 17 manufacturing shifted to Asia, garment 18 manufacturers in Asia could purchase 19 water-resistant laminated zippers for 20 much lower prices and with much shorter 21 delivery times than with respect to 22 zippers laminated and manufactured in 23 North America, T4s and T5s, correct? 24 MR. DANIELS: Objection as to 25 form.</p> <p style="text-align: right;">Page 355</p>

<p>1 A. What I am struggling with is 2 when you say after, it's as if that is 3 why it was after and the price was lower 4 before and the lead time was what it was 5 before, as well. So I don't understand 6 the shift to Asia part of your question. 7 Q. So garment manufacturers in 8 Asia could purchase water-resistant 9 laminated zippers for their high-end 10 outerwear from Asian laminators for much 11 lower prices and with much less delivery 12 times than with respect to T4s and T5s 13 laminated and manufactured in North 14 America, correct? 15 MR. DANIELS: Objection as to 16 form. 17 A. Again, there is other zippers 18 out there. As they are not comparable to 19 the success of the T4 and T5, but I know 20 that T8 was less, for example. I know 21 you showed me examples of others. 22 Q. I am not asking about T8s. Do 23 you want to answer my question, please? 24 Or I can ask it again. 25 A. I would appreciate that.</p> <p style="text-align: right;">Page 356</p>	<p>1 to the Uretek laminated T4s and T5s, 2 correct? 3 MR. DANIELS: Objection as to 4 form. He did answer your question. 5 A. Maybe I don't understand -- 6 when you say qualitative analysis, are we 7 still talking about the technical 8 comparability of them? 9 Q. The quality of the zippers. Do 10 you understand the word "quality"? 11 A. Well -- 12 Q. Looking at the zippers, talking 13 to customers, talking to experts in the 14 field about the quality of those zippers, 15 did you make any determination of the or 16 compare the quality of Asian manufactured 17 competitive laminated water-resistant 18 zippers with the T4s and T5s? 19 MR. DANIELS: Objection. Asked 20 and answered. 21 A. I did not as a technical 22 witness. I did as a damage witness 23 looking at the marketplace and looking 24 at, talking with Mr. Cockrell. 25 Q. But you looked at no data of</p> <p style="text-align: right;">Page 358</p>
<p>1 Q. Garment manufacturers in Asia 2 could purchase water-resistant laminated 3 zippers for their high-end outerwear from 4 Asian laminators for much lower prices 5 and much less delivery times, much 6 shorter delivery times than with respect 7 to T4s and T5s that Uretek laminated in 8 Connecticut? 9 MR. DANIELS: Objection to form. 10 A. Putting aside comparability. I 11 recognize that there was other 12 water-resistant zippers that were lower 13 priced in the marketplace. 14 Q. And you didn't make any 15 analysis from a qualitative standpoint of 16 the quality of these water-resistant 17 laminated zippers by Asian laminators as 18 compared to the T4s and T5s, correct? 19 A. Well, the qualitative analysis 20 that I did do was recognizing that the 21 T8s were sold in that marketplace. 22 Q. Can you answer my question, 23 sir? You didn't make any qualitative 24 analysis of the water-resistant laminated 25 zippers by Asian laminators as compared</p> <p style="text-align: right;">Page 357</p>	<p>1 sales by Asian laminators during the 2 relevant time period; did you, sir? 3 MR. DANIELS: Objection as to 4 form. 5 A. I didn't need to, because they 6 existed and T8s were sold in that 7 marketplace with them. 8 Q. I didn't ask you whether or not 9 you needed to. You didn't look at any 10 sales data by any Asian manufacturer of 11 laminated water-resistant zippers during 12 the relevant time period; did you, sir? 13 MR. DANIELS: Objection to form. 14 Obviously, he looked at the YKK data. 15 A. Putting aside YKK. I think 16 I've already testified that I did not get 17 third-party data from them, correct. 18 Q. I would like to place in front 19 of you what's been previously marked as 20 Defendants' Exhibit 335. 21 (Defendants' 335, document Bates 22 stamped YKK0698140, previously marked 23 for identification.) 24 MR. DANIELS: Can we take a 25 break after this exhibit?</p> <p style="text-align: right;">Page 359</p>

<p>1 MR. WOLKOFF: Yes.</p> <p>2 MR. DANIELS: Thank you.</p> <p>3 Q. Nike is another customer who</p> <p>4 you included in your figure 4 on page 13</p> <p>5 with over a million meters of purported</p> <p>6 high-end outerwear zippers, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And having placed in front of</p> <p>9 you DX 335, you're familiar with this</p> <p>10 internal YKK report on September 4th,</p> <p>11 2007 containing the minutes of its 14th</p> <p>12 global marketing meeting, correct?</p> <p>13 MR. DANIELS: Objection. Lack</p> <p>14 of authentication.</p> <p>15 A. I have seen things like this GM</p> <p>16 G meeting. I don't know if I saw this</p> <p>17 one. It was attached to Mr. Reed's depo.</p> <p>18 Maybe this is the one. I believe it is.</p> <p>19 Q. Let me direct your attention to</p> <p>20 page 698142, do you see there is a</p> <p>21 paragraph numbered 3, entitled</p> <p>22 "Polyurethane Film Coating Products"?</p> <p>23 A. Yes.</p> <p>24 Q. You see in the second bullet it</p> <p>25 talks about, "Main target customers are</p> <p style="text-align: right;">Page 360</p>	<p>1 competition. But other than that, I did</p> <p>2 not talk about this.</p> <p>3 Q. But you didn't talk about</p> <p>4 whether or not Nike was also purchasing</p> <p>5 water-resistant laminated zippers from</p> <p>6 competitors; did you? You said not a</p> <p>7 word about it.</p> <p>8 A. I did not specifically talk</p> <p>9 about all these other things going on. I</p> <p>10 focused on the data available here which</p> <p>11 shows that Nike and others paid more for</p> <p>12 T8s in this marketplace despite that</p> <p>13 competition.</p> <p>14 Q. You didn't talk at all in your</p> <p>15 reports about any of these customers in</p> <p>16 terms of whether or what they were buying</p> <p>17 from competitors with regard to</p> <p>18 water-resistant zippers for their</p> <p>19 high-end outerwear; did you?</p> <p>20 MR. DANIELS: Objection as to</p> <p>21 form. Objection, asked and answered.</p> <p>22 A. I don't talk about their other</p> <p>23 activities. I talk about the sales data</p> <p>24 available here. And the market that's</p> <p>25 been demonstrated.</p> <p style="text-align: right;">Page 362</p>
<p>1 the ones who are not using YKK but cheap</p> <p>2 Chinese water-repellent zippers in the</p> <p>3 Georgia accounts who switched or are</p> <p>4 going to switch to competitors due to</p> <p>5 cost reasons, for example, Nike and</p> <p>6 Lands' End," correct?</p> <p>7 A. I see that.</p> <p>8 Q. And you had read that in</p> <p>9 connection with doing your work in this</p> <p>10 matter in preparing your supplemental</p> <p>11 report, Exhibit 12, correct?</p> <p>12 A. Yes, I recall this.</p> <p>13 Q. You didn't talk about Niki or</p> <p>14 Lands' End indicating that they might or</p> <p>15 were switching to competitor waterproof</p> <p>16 or water-resistant zipper laminators due</p> <p>17 to cost reasons; did you, sir?</p> <p>18 A. I don't recall talking about</p> <p>19 this e-mail in my report, correct.</p> <p>20 Q. You didn't talk about them</p> <p>21 either; did you?</p> <p>22 A. I did not talk about Nike and</p> <p>23 Lands' End other than the sales data I</p> <p>24 analyzed which includes Nike purchasing</p> <p>25 T8s at a certain price despite this</p> <p style="text-align: right;">Page 361</p>	<p>1 Q. As far as you know, the 13</p> <p>2 customers listed in your figure 4</p> <p>3 actually purchased more meters of</p> <p>4 water-resistant laminated zippers for</p> <p>5 their high-end outerwear than you</p> <p>6 reported in your supplemental report, you</p> <p>7 just had no data on that, correct?</p> <p>8 MR. DANIELS: Objection as to</p> <p>9 form.</p> <p>10 A. I don't know what else they</p> <p>11 purchased. That data is not available to</p> <p>12 me, correct, one way or the other.</p> <p>13 Q. And you see on page 698146 of</p> <p>14 Defendants' Exhibit 335 there is a</p> <p>15 Section 8 entitled "Market Analysis."</p> <p>16 A. Yes, I see that.</p> <p>17 Q. And you see it says in the</p> <p>18 second bullet "IDEAL" in all capital</p> <p>19 letters "Presents real samples in three</p> <p>20 weeks, quotes pricing in one day"?</p> <p>21 A. I do.</p> <p>22 Q. Do you know if that's true, at</p> <p>23 the time that there was a competitor by</p> <p>24 the name of IDEAL, during the relevant</p> <p>25 time period, who presented samples to</p> <p style="text-align: right;">Page 363</p>

<p>1 customers in three weeks but quoted 2 pricing in a day? 3 A. Not the Outlook in this 4 document, but I was aware that IDEAL was 5 selling zippers. 6 Q. IDEAL was selling during the 7 relevant time period water-resistant 8 laminated zippers to high-end outerwear 9 customers, correct? You were aware of 10 that? 11 A. I was aware that IDEAL was 12 selling, yes, to them. 13 Q. And you have no knowledge, no 14 basis for saying that IDEAL zippers were 15 not acceptable, noninfringing 16 alternatives? 17 A. Well, maybe I don't understand 18 your question. IDEAL was there, 19 infringing or not. YKK achieved the 20 sales. 21 Q. You do understand my question. 22 You keep avoiding the questions by -- 23 MR. DANIELS: Again, I am 24 getting very tired of it Attorney 25 Wolkoff. You're accusing the witness</p> <p style="text-align: right;">Page 364</p>	<p>1 relevant time period, sir, infringed the 2 Uretex '214 patent? 3 A. I am not a technical witness. 4 I don't have a basis to say whether or 5 not that infringed or not. 6 MR. WOLKOFF: Let's take the 7 break you wanted, Mr. Daniels. 8 THE VIDEOGRAPHER: We are now 9 going off the record. The time is 10 11:22 a.m. This is the end of the 11 media labeled number 1. 12 [Off the record.] 13 THE VIDEOGRAPHER: We are back 14 on the record. The time is 15 a.m., and this is the beginning of 16 media labeled number 2. 17 BY MR. WOLKOFF: 18 Q. Mr. Donohue, are you aware of 19 instances in which Uretex turned down 20 business, turned down sales of its T4s or 21 T5s because it refused to lower its 22 price? 23 A. In general, yes, I am aware of 24 in the actual world price negotiations 25 like that.</p> <p style="text-align: right;">Page 366</p>
<p>1 of intentionally avoiding your 2 question. 3 MR. WOLKOFF: I think the record 4 reflects that he is. 5 MR. DANIELS: You're 6 misunderstanding the record or you're 7 not understanding your own questions. 8 I am running out of patience with the 9 attacks on the witness. 10 MR. WOLKOFF: I am not as smart 11 as you are. I think anyone reviewing 12 the record can see what this 13 professional witness is doing. 14 Q. Do you have any basis for 15 saying that the IDEAL zippers, laminated 16 zippers, during the relevant time period, 17 were not acceptable non-infringing 18 alternatives? 19 A. Again, I believe I do, because 20 I accepted what YKK was able to do with 21 them in the market. 22 Q. Okay. I am talking about 23 non-infringing alternatives. Do you have 24 any basis for saying that IDEAL made 25 zippers that infringed during the</p> <p style="text-align: right;">Page 365</p>	<p>1 Q. I would like to place in front 2 of you what we had marked as a Trial 3 Exhibit 353, Defendants' Exhibit 353. 4 (Defendants' Exhibit 353, 5 document Bates stamped YKK0016715, 6 previously marked for identification.) 7 Q. You have seen this e-mail 8 before, correct? 9 MR. DANIELS: Objection. Lack 10 of authentication. 11 A. Yes, I believe I have seen this 12 or something very much like it. 13 Q. Looking at the bottom of page 14 16716, following onto 16717, do you see 15 that Mr. Shibata of YKK brought to Stuart 16 Press's attention an inquiry from Russia 17 to purchase up to 2 million meters of 18 Uretex laminated T4s, this is back on 19 January 28, 2008? 20 A. I do see that. 21 Q. And it was not only up to 2 22 million meters for that year, it was for 23 a yearly usage that is going forward each 24 year, correct, according to the e-mail? 25 A. It says it is a yearly usage.</p> <p style="text-align: right;">Page 367</p>

<p>1 I see that.</p> <p>2 Q. And YKK asked Stuart Press of</p> <p>3 Uretek if he would reduce his price so</p> <p>4 that they could get this order, correct?</p> <p>5 A. I see him asking that, yes.</p> <p>6 Q. And on page 16715 Mr. Press</p> <p>7 responded by saying, "Not only wasn't</p> <p>8 Uretek going to reduce the price of its</p> <p>9 T4 laminated zippers but they were</p> <p>10 actually faced with increasing its prices</p> <p>11 during the year," correct?</p> <p>12 A. Yes.</p> <p>13 Q. And so he declined to offer any</p> <p>14 discount in order to get the 2 million,</p> <p>15 up to 2 million meter order for T4s,</p> <p>16 correct?</p> <p>17 A. Yes, in this e-mail Mr. Shibata</p> <p>18 is reporting that he did not offer any</p> <p>19 discount on the inquiry. That's what</p> <p>20 Mr. Shibata is saying.</p> <p>21 Q. And is Mr. Shibata said to</p> <p>22 Mr. Press, "It's unfortunate you can't</p> <p>23 offer any discount on this 2 million</p> <p>24 meter inquiry" right?</p> <p>25 A. That's what he said.</p> <p style="text-align: right;">Page 368</p>	<p>1 meters a year for T4s because it wouldn't</p> <p>2 reduce its prices?</p> <p>3 MR. DANIELS: Objection as to</p> <p>4 form.</p> <p>5 A. All I have is this e-mail.</p> <p>6 That's what this e-mail is suggesting.</p> <p>7 Q. Well, you talked to Mr. Press</p> <p>8 while he was still alive, right?</p> <p>9 A. I did.</p> <p>10 Q. Did you ask him about this?</p> <p>11 A. Not specifically this. I asked</p> <p>12 him about the impact of higher volumes</p> <p>13 and price decreases.</p> <p>14 Q. The fact that T8s, 9s and 10s</p> <p>15 could be sold by YKK to Asian garment</p> <p>16 manufacturers for high-end outerwear</p> <p>17 doesn't mean that YKK could sell T4s and</p> <p>18 T5s to those customers; did it, sir or</p> <p>19 does it?</p> <p>20 A. Well, I think it demonstrates</p> <p>21 that there is a market demand for that</p> <p>22 type of zipper. So it does demonstrate</p> <p>23 that there is a market demand for that</p> <p>24 zipper.</p> <p>25 Q. But the fact that YKK could</p> <p style="text-align: right;">Page 370</p>
<p>1 Q. And Mr. Press was true to his</p> <p>2 word. Uretek, in fact, increased its</p> <p>3 prices on the T4s and T5s beginning in</p> <p>4 2008, correct?</p> <p>5 A. I would have to go back, but I</p> <p>6 do recall some price increases during</p> <p>7 this, the actual period where volumes</p> <p>8 were not where they wanted them to be.</p> <p>9 Q. They just turned down 2 million</p> <p>10 meters a year, and yet you sit there and</p> <p>11 say that Uretek volumes was not where</p> <p>12 Uretek wanted them to be; is that your</p> <p>13 testimony, sir?</p> <p>14 A. That's my understanding from</p> <p>15 talking to Mr. Press, that the volumes we</p> <p>16 are talking about, in my analysis, were</p> <p>17 very different than this, but yes.</p> <p>18 Q. Uretek turned down 2 million</p> <p>19 meters of T4s a year because it wouldn't</p> <p>20 reduce its price, correct?</p> <p>21 A. I only know what this e-mail</p> <p>22 says, but again, I am not talking about 2</p> <p>23 million a year, I am talking about --</p> <p>24 Q. I am asking, sir, whether</p> <p>25 Uretek turned down an order for 2 million</p> <p style="text-align: right;">Page 369</p>	<p>1 sell its laminated T8s, 9s and 10s to</p> <p>2 customers, doesn't mean that it could</p> <p>3 sell T4s and T5s to its customers,</p> <p>4 particularly given higher prices and</p> <p>5 longer delivery times for Asian garment</p> <p>6 manufacturers, correct, for the T4s and</p> <p>7 T5s?</p> <p>8 MR. DANIELS: Objection to form.</p> <p>9 A. Well, I think I've talked about</p> <p>10 pricing. The pricing in the actual</p> <p>11 world, yes, they were higher. But at the</p> <p>12 same or a comparable price for a</p> <p>13 comparable product that was not available</p> <p>14 elsewhere, yes, that market demand does</p> <p>15 demonstrate that they could achieve those</p> <p>16 sales.</p> <p>17 Q. So your testimony is the fact</p> <p>18 that YKK could sell, could sell YKK</p> <p>19 laminated zippers to customers meant that</p> <p>20 YKK could sell Uretek laminated T4s and</p> <p>21 T5s during the relevant time period to</p> <p>22 those customers despite the higher prices</p> <p>23 and longer delivery times for those T4s</p> <p>24 and T5s; that's your testimony?</p> <p>25 MR. DANIELS: Objection as to</p> <p style="text-align: right;">Page 371</p>

<p>1 form.</p> <p>2 A. Well, again, despite -- it's</p> <p>3 not despite. My testimony recognizes</p> <p>4 that price would be a factor, and</p> <p>5 recognizes that they would sell those.</p> <p>6 And in the actual world the T4 was much</p> <p>7 higher. But the market demand was there.</p> <p>8 There was a comparable zipper and there</p> <p>9 was no alternatives.</p> <p>10 Q. Do you have -- strike that.</p> <p>11 Do you cite to any specific</p> <p>12 customer in your reports where the</p> <p>13 customer said I am willing to pay more</p> <p>14 and wait longer for T4s and T5s than to</p> <p>15 purchase T8s, 9s and 10s or zippers</p> <p>16 manufactured by some other third-party</p> <p>17 water-resistant laminator?</p> <p>18 MR. DANIELS: Objection as to</p> <p>19 form.</p> <p>20 A. I don't believe I have that</p> <p>21 fact set in my report other than the T4</p> <p>22 and T5 that did occur in the actual</p> <p>23 world. There were customers that still</p> <p>24 purchased them.</p> <p>25 Q. You don't identify if those</p> <p style="text-align: right;">Page 372</p>	<p>1 Q. So the point is that the T4s</p> <p>2 and T5s that were sold during the</p> <p>3 relevant time period were sold by YKK to</p> <p>4 manufacturers of garments that</p> <p>5 transactions occurred in North America,</p> <p>6 correct?</p> <p>7 A. Some of them did. But some of</p> <p>8 them also occurred in Asia and they were</p> <p>9 to the high-end outerwear customers.</p> <p>10 Q. What percentage occurred in</p> <p>11 Asia, sir?</p> <p>12 A. Due to YKK's infringement into</p> <p>13 the excluded markets, a very low amount,</p> <p>14 because they were also selling T8s.</p> <p>15 Q. The sale of T4s and T5s in Asia</p> <p>16 to Asian garment manufacturers during the</p> <p>17 relevant time period were very low,</p> <p>18 correct?</p> <p>19 A. They were very low in the</p> <p>20 actual world due to the infringement,</p> <p>21 yes. But they were occurring by the same</p> <p>22 customers.</p> <p>23 Q. By far the majority of the</p> <p>24 sales of T4s and T5s during the relevant</p> <p>25 time period were made to customers in</p> <p style="text-align: right;">Page 374</p>
<p>1 customers were Asian customers in your</p> <p>2 reports, do you, that purchased T4s and</p> <p>3 T5s in the relevant time period?</p> <p>4 A. I do identify that. They were</p> <p>5 sold by Asian-selling companies.</p> <p>6 Q. You don't identify whether the</p> <p>7 T4s and T5s that were purchased during</p> <p>8 the relevant time period were</p> <p>9 transactions that took place between YKK</p> <p>10 and Asian garment manufacturers in Asia;</p> <p>11 do you, sir?</p> <p>12 A. They were -- the affiliates</p> <p>13 that sold them were Asian affiliates.</p> <p>14 Q. I am not talking about</p> <p>15 affiliates. You don't identify whether</p> <p>16 the sales of T4s and T5s during the</p> <p>17 relevant time period were made by YKK to</p> <p>18 Asian manufacturers in Asia; do you, sir?</p> <p>19 MR. DANIELS: Objection. Asked</p> <p>20 and answered.</p> <p>21 A. I know from the sales data that</p> <p>22 they were made, the sales were made by</p> <p>23 YKK Asian affiliates. So I assume they</p> <p>24 are selling to Asia. You're right, they</p> <p>25 could be selling to other people.</p> <p style="text-align: right;">Page 373</p>	<p>1 North America, correct?</p> <p>2 A. In the actual world I think</p> <p>3 that's fair. Most of them were probably</p> <p>4 made in North America, again, because the</p> <p>5 Asian companies were limited. The T8 was</p> <p>6 lower priced.</p> <p>7 Q. I would like to place in front</p> <p>8 of you what's been marked as Defendants'</p> <p>9 Exhibit 364.</p> <p>10 (Defendants' Exhibit 364,</p> <p>11 document Bates stamped YKK0258349,</p> <p>12 previously marked for identification.)</p> <p>13 MR. DANIELS: I am sorry, did</p> <p>14 you say plaintiffs or defendants?</p> <p>15 MR. WOLKOFF: Defendants'</p> <p>16 Exhibit 364.</p> <p>17 MR. DANIELS: I am going to</p> <p>18 object due to lack of authentication.</p> <p>19 Q. You have seen DX 364 before in</p> <p>20 connection with your work in this matter,</p> <p>21 correct?</p> <p>22 A. I have seen this before, yes.</p> <p>23 Q. And you see beginning on page</p> <p>24 258350 this is an e-mail in which Stuart</p> <p>25 Press notified YKK in April of 2008 that</p> <p style="text-align: right;">Page 375</p>

<p>1 YKK was increasing its prices on the T4 2 and T5 by 6 percent, correct? 3 A. I see that there, yes. 4 Q. And on page 258349 YKK said to 5 Mr. Press, "We are very surprised to hear 6 6 percent price increase from you. 7 Unfortunately, it is impossible for us to 8 accept a price increase now due to market 9 and competitive situation," correct? 10 A. I see what he wrote there, yes. 11 Q. And Mr. Press wrote back, "Too 12 bad. We're going to increase our prices 13 anyway on the T4s and T5s," correct? 14 MR. DANIELS: Objection. That 15 appears nowhere in the document. 16 Misstates the record. 17 Q. Mr. Press, you see said in 18 response, "I am happy to discuss this 19 live, but at this juncture, we have to 20 implement pricing which reflects the 21 reality of what we are dealing with on 22 the cost side"? 23 MR. DANIELS: Objection. 24 Doesn't state the entirety of the 25 e-mail and takes a sentence out of</p> <p style="text-align: right;">Page 376</p>	<p>1 world, I understand what they were doing. 2 Q. And YKK wrote in their e-mail 3 above, "Price increases from Uretek all 4 are big. Some of them are huge," right, 5 sir? 6 A. Yes. 7 Q. You were aware of this when you 8 did your report, correct? 9 A. I was. 10 Q. Did you mention any price 11 increases by YKK on the T8s, 9s and 10s 12 during the time period at issue, the 13 relevant time period, as opposed to price 14 increases on Uretek on its laminated 15 zippers? 16 A. I looked at the T8s, 9s and 10s 17 prices over the time period. So whatever 18 the price changes were, I looked at them. 19 They may have went up, they may have went 20 down, depending on the zipper. 21 Q. Do you recollect any 22 announcement by YKK that you refer to in 23 your reports that it was raising its 24 prices to the T8s, 9s and 10s? 25 A. I didn't look at one-off</p> <p style="text-align: right;">Page 378</p>
<p>1 context. 2 A. I see what he responded. Yes, 3 I do see that. 4 Q. Let me place in front of you 5 what we have marked as DX 533. 6 (Defendants' Exhibit 533, 7 document Bates stamped YKK0601288, 8 previously marked for identification.) 9 Q. This is another e-mail from 10 Uretek to YKK, this time during the 11 relevant time period, February 15th, 12 2011, about a price increase on the T4s 13 and T5s, correct? 14 MR. DANIELS: Objection. Lack 15 of authentication. 16 A. I see that here, the e-mail on 17 February 15th on 1288, is that what 18 you're referring or are you on the back 19 page? 20 Q. No, 601288. 21 A. Okay. 22 Q. You see that Uretek notified 23 YKK that it's new pricing will take 24 effect on all new orders, correct? 25 A. I see that. Again, the actual</p> <p style="text-align: right;">Page 377</p>	<p>1 e-mails to do that. I looked at the 2 sales data. The sales data reflect the 3 actual pricing for the 500 million 4 dollars of sales. 5 Q. And do you recall what it 6 reflects? 7 A. It reflects a, generally the 8 prices went up over time during the time. 9 But it was reflected by year in my 10 report. It goes up and down depending on 11 the zipper. 12 Q. Whose prices went up more, do 13 you say in your report, during the 14 relevant time period, YKK's for its T8s, 15 9s and 10s or Uretek's prices for it's 16 T4s and T5s; do you know? 17 A. I would have to look at the 18 data, but I do recall and know that in 19 the actual world, the T4 and T5 prices 20 were higher, were generally higher than 21 the T8s, 9s and 10s. 22 Q. In fact during the relevant 23 time period, Uretek's Stuart Press 24 recognizes that the Uretek laminated T4s 25 and T5s were no longer competitive in</p> <p style="text-align: right;">Page 379</p>

<p>1 terms of delivery times and also, 2 perhaps, in price, correct? 3 A. I can't speak for Mr. Press. I 4 recall seeing one-off e-mails talking 5 about situations. But he did not suggest 6 that to me over time. 7 Q. Let me show you DX 509, please. 8 (Defendants' Exhibit 509, 9 document Bates stamped YKK0004623, 10 previously marked for identification.) 11 MR. DANIELS: Objection. Lack 12 of authentication. 13 Q. You see that DX 509 on page 14 4623 is an e-mail from Mr. Blunt to 15 others at YKK on June 2, 2010, so during 16 the relevant time period, reporting on 17 his meeting with Stuart Press? 18 A. I see the e-mail. 19 Q. Do you see in the third 20 paragraph, that paragraph begins with the 21 words "High-end issue" underscored? 22 A. I do. 23 Q. Do you see the e-mail goes on 24 to say, "From your discussion he" -- 25 referring to Stuart Press -- "recognizes</p> <p style="text-align: right;">Page 380</p>	<p>1 e-mail in my report. 2 Q. You knew about it, you had read 3 it, correct? 4 A. I had read this e-mail. 5 Q. You would agree, sir, that 6 Arc'teryx was a very important and large 7 customer for both YKK and Uretek? 8 A. Yes. 9 Q. Can you tell me what your 10 knowledge was of Arc'teryx' willingness 11 or unwillingness to purchase the Uretek 12 laminated T4s and T5s during the relevant 13 time period? 14 MR. DANIELS: Objection to form. 15 A. I haven't talked to Arc'teryx. 16 I just have their sales data showing that 17 they, I believe, did purchase some during 18 this time period and they were a large 19 purchaser of T4 and 5 before the relevant 20 time period. 21 Q. Do you know anything about 22 Arc'teryx' willingness or unwillingness 23 to purchase Uretek laminated T4s or T5s, 24 during the relevant time period from 25 February 2009 going up through September</p> <p style="text-align: right;">Page 382</p>
<p>1 this business has shifted to Asia and 2 Asian-produced product is not competitive 3 in lead time and perhaps price." 4 Do you see that? 5 A. I see the quote from Mr. Blunt 6 reporting what he says Mr. Press says, 7 yes. 8 Q. Did you ask Mr. Press 9 specifically about this e-mail when you 10 talked with him? 11 A. Again, I don't recall if I 12 talked to him about this e-mail. I 13 talked about this concept about the 14 ability to make the sales. 15 Q. Did you talk with Mr. Press 16 about this e-mail when you spoke to him, 17 whether or not it was accurate? 18 A. I did not directly talk to him 19 about this e-mail, but I talked to him 20 about these issues such as price and lead 21 time. 22 Q. You didn't say anything about 23 this e-mail in your report; did you? 24 A. I don't know. I would need to 25 look back. I don't recall citing this</p> <p style="text-align: right;">Page 381</p>	<p>1 2019? 2 MR. DANIELS: Objection as to 3 form. 4 A. I only know that they did 5 purchase some and that, therefore -- in 6 the actual world, but they were offered 7 both, the T4 and T5s at a much higher 8 price. 9 Q. And so they bought T8s, 9s and 10 10s, right? 11 A. They did. YKK offered the T8s, 12 9s and 10s at a much lower price and so 13 Arc'teryx bought them into the excluded 14 markets. 15 Q. What do you know about 16 Arc'teryx shifting its business from 17 Canada to Asia, its manufacturing garment 18 business? 19 A. I understood that they, among 20 others, were shifting manufacturing to 21 Asia throughout this relationship period. 22 Q. Did you understand that 23 Arc'teryx shifted most of its 24 manufacturing of high-end outerwear to 25 Asia from 2009 on, that is during the</p> <p style="text-align: right;">Page 383</p>

<p>1 relevant time period?</p> <p>2 A. I knew that it was shifting. I</p> <p>3 don't have any specifics about that,</p> <p>4 other than where they were purchasing</p> <p>5 AquaGuard.</p> <p>6 Q. I would like to show the</p> <p>7 witness Defendants' Exhibit 460.</p> <p>8 (Defendants' 460, document Bates</p> <p>9 stamped YKK0196058, previously marked</p> <p>10 for identification.)</p> <p>11 Q. You reviewed this in connection</p> <p>12 with your work in this matter, correct?</p> <p>13 MR. DANIELS: Objection. Lack</p> <p>14 of authentication.</p> <p>15 MR. WOLKOFF: You keep saying</p> <p>16 that, but the witness said that he</p> <p>17 considered these e-mails in connection</p> <p>18 with his work. Therefore, I am</p> <p>19 allowed to show them to him.</p> <p>20 MR. DANIELS: I am not</p> <p>21 instructing him not to answer the</p> <p>22 question. I am just preserving</p> <p>23 objections for the record. YKK seems</p> <p>24 to have an issue with authentication</p> <p>25 of its own documents in this trial.</p> <p style="text-align: right;">Page 384</p>	<p>1 do you?</p> <p>2 A. No, I don't recall citing this</p> <p>3 document.</p> <p>4 Q. You see this is an e-mail from</p> <p>5 Kenji Miyamoto at YKK. And it's dated</p> <p>6 during the relevant time period June 4th,</p> <p>7 2009, and the subject is Uretek.</p> <p>8 A. Yes.</p> <p>9 Q. You know who Mr. Miyamoto is or</p> <p>10 was during the relevant time period?</p> <p>11 A. No, I just assume from the</p> <p>12 e-mail that he's at the selling affiliate</p> <p>13 in Canada.</p> <p>14 Q. You don't know anymore than</p> <p>15 that about him?</p> <p>16 A. I do not.</p> <p>17 Q. Mr. Miyamoto wrote in his</p> <p>18 e-mail, "This is the comments YKK Canada</p> <p>19 has received from Arc'teryx on Uretek's</p> <p>20 T4 chains."</p> <p>21 And then he lists two issues,</p> <p>22 do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And the first one is a pricing</p> <p>25 issue and the second is a quality issue,</p> <p style="text-align: right;">Page 386</p>
<p>1 MR. WOLKOFF: We do and it's not</p> <p>2 incorrectly.</p> <p>3 MR. DANIELS: We just want to</p> <p>4 make sure we are preserving the same</p> <p>5 objections that YKK states.</p> <p>6 MR. WOLKOFF: I just want to</p> <p>7 state on the record that it's an</p> <p>8 improper objection. But that's okay.</p> <p>9 You can keep making it.</p> <p>10 MR. DANIELS: I respectfully</p> <p>11 disagree. That's okay. He's not been</p> <p>12 instructed not to answer the question,</p> <p>13 so.</p> <p>14 A. I see this e-mail and I don't</p> <p>15 know if I've seen this before.</p> <p>16 Q. You say that you looked at it.</p> <p>17 You say that in your report, your</p> <p>18 supplemental report; do you remember</p> <p>19 that?</p> <p>20 A. Of course, I received all of</p> <p>21 the exhibits and I searched on them for</p> <p>22 things. But I just don't remember, I</p> <p>23 don't remember this as a trial exhibit.</p> <p>24 Q. Well, you didn't say anything</p> <p>25 about this Exhibit 460 in your reports;</p> <p style="text-align: right;">Page 385</p>	<p>1 correct?</p> <p>2 A. That's what the e-mail says.</p> <p>3 Q. And in the first paragraph</p> <p>4 under pricing issue Mr. Miyamoto said</p> <p>5 that Arc'teryx was looking for discounts,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And with regard to the quality</p> <p>9 issue, it said that Arc'teryx thought</p> <p>10 that the T8 was a better product than the</p> <p>11 T4, correct?</p> <p>12 A. That's what this gentleman is</p> <p>13 saying.</p> <p>14 Q. Did you do any analysis or</p> <p>15 review or investigation to determine if</p> <p>16 those issues were true, that is Arc'teryx</p> <p>17 had a pricing issue and a quality issue</p> <p>18 with the Uretek laminated T4s and T5s?</p> <p>19 A. I did, as with all customers, I</p> <p>20 looked at the pricing issue and addressed</p> <p>21 that in my reports. And I recognized</p> <p>22 that if you're selling it for much higher</p> <p>23 against the T8, the market demand is at</p> <p>24 the T8 price level, so that would be the</p> <p>25 price issue. For the quality issue,</p> <p style="text-align: right;">Page 387</p>

<p>1 Arc'teryx bought millions of T4s and T5s. 2 Q. But not after it shifted its 3 business to Asia, correct? Arc'teryx 4 practically stopped its purchases of T4s 5 and T5s after it shifted its business 6 from North America to Asia, correct? 7 A. They didn't stop, but they did, 8 they bought much less, absolutely. They 9 started buying T8s instead of T4s, for 10 example, in the excluded markets. 11 Q. You didn't say anything in your 12 reports about Arc'teryx having a pricing 13 issue and a quality issue with T4s and 14 T5s, the Uretek laminated zippers; did 15 you? 16 MR. DANIELS: Objection as to 17 form. 18 A. I didn't address it at that 19 specific level. And as I said, I don't 20 cite this document in my report. 21 Q. Do you know whether or not YKK 22 Canada offered Arc'teryx discounts on the 23 T4s and T5s in order to try to keep the 24 business and prevent Arc'teryx from 25 switching over to T8s, 9s and 10s or</p> <p style="text-align: right;">Page 388</p>	<p>1 recall reviewing this one. 2 Q. Did you actually review all of 3 the trial exhibits that you received? 4 A. I did not review every trial 5 exhibit. I did searches on them for 6 information. But I did not necessarily 7 review every trial exhibit. 8 Q. Didn't you say in your report 9 that you considered all of the trial 10 exhibits in connection with your work in 11 your reports? 12 A. I did. I said I considered 13 them. And I received them. And I 14 searched on them. I am just saying I 15 don't recall this particular e-mail. 16 Q. But actually now you're saying 17 you didn't read all of the trial 18 exhibits, correct? 19 MR. DANIELS: Objection to form. 20 A. I didn't say I did. I said I 21 researched on them and tried to find 22 information relevant. 23 Q. You said in your report you 24 considered all of them. Did you consider 25 all of them without reading them?</p> <p style="text-align: right;">Page 390</p>
<p>1 other laminated zippers for their 2 high-end outerwear? 3 A. I don't know. I have the sales 4 records that show the ultimate prices. I 5 don't know if they were discounted. 6 Q. Let me show you Defendants' 7 Exhibit 462. 8 (Defendants' Exhibit 462, 9 document Bates stamped YKK0407549, 10 previously marked for identification.) 11 Q. You see this is an e-mail 12 string during the relevant time period, 13 so June 2009, involving Kenji Miyamoto 14 from YKK Canada discussing Arc'teryx? 15 MR. DANIELS: Objection. Lack 16 of authentication. 17 A. I see what it is, yes. 18 Q. And you saw this before in 19 connection with your work in this matter, 20 correct? 21 A. I don't recognize this. 22 Q. You said in your report that 23 you had reviewed it, you don't remember? 24 A. It was in the set of trial 25 exhibits that I received. But I don't</p> <p style="text-align: right;">Page 389</p>	<p>1 A. I do searches on things and I 2 include what I receive and what 3 information is available to me. 4 Q. Did you consider the trial 5 exhibits that you said you considered in 6 your report without reading them; is that 7 your testimony? 8 A. That's not my testimony. 9 Q. On page 407550, in the middle 10 of the page, Mr. Miyamoto discussed YKK's 11 wanting to offer Arc'teryx a special 12 price with large discount, given the fact 13 that Asia was 35 percent cheaper, 14 correct? 15 A. Are you on the line under 16 "Greg," is that where you are? 17 Q. Yes. 18 A. I see what it says here. 19 Q. You see that? 20 A. I do. 21 Q. It says, "If we offer with T4 22 special price, we have to give large 23 discounts on both chains and cut zippers. 24 Price differences in chains are 20 25 percent, cut zippers is 35 percent. Asia</p> <p style="text-align: right;">Page 391</p>

<p>1 is cheaper" right?</p> <p>2 A. Yes, that's what it says.</p> <p>3 Q. And then on page 7551,</p> <p>4 Mr. Miyamoto said towards the bottom of</p> <p>5 the page, he set out his "Guess of what</p> <p>6 will happen, he said "Arc'teryx will move</p> <p>7 into switching the T8s starting from</p> <p>8 Asia, no matter what (price, quality,</p> <p>9 minimum lot logistics in Asia)."</p> <p>10 Do you see that?</p> <p>11 A. I see what he says.</p> <p>12 Q. Did you say anything in your</p> <p>13 reports about Arc'teryx wanting to switch</p> <p>14 out of buying T4s as laminated by Uretek</p> <p>15 because of quality, minimum lots or</p> <p>16 logistics in Asia?</p> <p>17 A. I did not specifically say</p> <p>18 something like that.</p> <p>19 Q. Do you know what a minimum lot</p> <p>20 refers to?</p> <p>21 A. Basically, the minimum that you</p> <p>22 have to purchase.</p> <p>23 Q. And what was the story with</p> <p>24 regard to Uretek with regard to the</p> <p>25 minimum amounts that you had to purchase</p> <p style="text-align: right;">Page 392</p>	<p>1 details.</p> <p>2 Q. Well, you recall the dead stock</p> <p>3 issue but you don't know what dead stock</p> <p>4 means?</p> <p>5 A. As I said, I recall dead stock</p> <p>6 coming up but I don't recall the details.</p> <p>7 Q. Who did it come up with?</p> <p>8 A. I think Mr. Press because we</p> <p>9 talked about any issues that were raised</p> <p>10 in the actual world about what they would</p> <p>11 do to solve them.</p> <p>12 Q. Your analysis is a but-for</p> <p>13 analysis rather than what occurred in the</p> <p>14 actual world, correct?</p> <p>15 A. It's a but-for analysis. It</p> <p>16 considers things that are going on in the</p> <p>17 actual world, as I said this morning.</p> <p>18 Q. But principally it's a but-for</p> <p>19 analysis, correct?</p> <p>20 A. It's but-for compared to actual</p> <p>21 to get damages, yes.</p> <p>22 Q. Well, do you know how much</p> <p>23 Arc'teryx or other customers were</p> <p>24 spending on this issue of dead stock in</p> <p>25 connection with their purchases of T4s</p> <p style="text-align: right;">Page 394</p>
<p>1 from them as compared to from others; do</p> <p>2 you know?</p> <p>3 A. I don't know in the actual</p> <p>4 scenario what that minimum lot was.</p> <p>5 Q. Do you know what the phrase</p> <p>6 "dead stock" means in this context?</p> <p>7 A. I have heard it before. I</p> <p>8 can't remember as I sit here. I don't</p> <p>9 want to guess.</p> <p>10 Q. Well, do you see that it's</p> <p>11 mentioned on the very first page of</p> <p>12 Defendants' Exhibit 462, Page 407549 at</p> <p>13 the top in the second paragraph, third</p> <p>14 line. It says, "What to do with all dead</p> <p>15 stock with T4?"</p> <p>16 A. I see that.</p> <p>17 Q. Did you know that Arc'teryx was</p> <p>18 complaining that it had to buy more from</p> <p>19 Uretek than it wanted and, therefore, was</p> <p>20 spending money with regard to so-called</p> <p>21 dead stock that it didn't need or want?</p> <p>22 MR. DANIELS: Objection as to</p> <p>23 form.</p> <p>24 A. I don't -- as I said, I recall</p> <p>25 the dead stock issue but I don't know the</p> <p style="text-align: right;">Page 393</p>	<p>1 and T5s, the Uretek laminated zippers?</p> <p>2 MR. DANIELS: Objection.</p> <p>3 Q. Any idea?</p> <p>4 MR. DANIELS: Objection as to</p> <p>5 form.</p> <p>6 A. No, I don't have that</p> <p>7 information from them.</p> <p>8 Q. Do you know whether or not YKK</p> <p>9 had any kind of minimum requirement of</p> <p>10 purchases in connection with the T8s, 9s</p> <p>11 and 10s, the way that Uretek did?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know whether or not</p> <p>14 customers had issue with dead stock in</p> <p>15 their purchases of T8s, 9s and 10s from</p> <p>16 YKK?</p> <p>17 A. I don't know one way or the</p> <p>18 other.</p> <p>19 Q. Do you know whether or not</p> <p>20 other competitors in the manufacturing</p> <p>21 and lamination of water-resistant</p> <p>22 zippers, had any kind of minimum</p> <p>23 requirements that lead to dead stock on</p> <p>24 the part of purchasers or customers?</p> <p>25 A. I don't know their policies on</p> <p style="text-align: right;">Page 395</p>

<p>1 that.</p> <p>2 Q. Do you know whether or not the</p> <p>3 different affiliates of YKK were in</p> <p>4 competition with each other?</p> <p>5 A. I haven't talked to them about</p> <p>6 that. I don't know -- I am kind of</p> <p>7 recalling a document or two where they</p> <p>8 were both, I noticed they were both</p> <p>9 selling sometimes to the same people.</p> <p>10 Q. Do you know why YKK Canada</p> <p>11 would be offering discounts to Arc'teryx</p> <p>12 if they continued to purchase T4s and T5s</p> <p>13 and didn't switch to purchasing T8s, 9s</p> <p>14 and 10s from YKK affiliates in Asia?</p> <p>15 A. I don't think I understand your</p> <p>16 question.</p> <p>17 Q. Do you know why YKK Canada was</p> <p>18 offering discounts to Arc'teryx to</p> <p>19 continue to purchase T4s as opposed to</p> <p>20 Arc'teryx switching and buying T8s or 9s</p> <p>21 or 10s from YKK affiliates in Asia?</p> <p>22 A. I haven't interviewed anyone</p> <p>23 from Canada. I assume they are trying to</p> <p>24 make sales.</p> <p>25 Q. Do you know whether or not YKK</p> <p style="text-align: right;">Page 396</p>	<p>1 ever sold any T8s, 9s and 10s during the</p> <p>2 relevant time period; is that anything</p> <p>3 that you looked at?</p> <p>4 A. I looked at sales by</p> <p>5 affiliates. I would need to go and look.</p> <p>6 That's possible. I need to go and check.</p> <p>7 Q. Is there anything in your</p> <p>8 reports about whether YKK Canada ever</p> <p>9 sold any T8s, 9s and 10s during the</p> <p>10 relevant time period?</p> <p>11 A. In the narrative I don't recall</p> <p>12 talking about that. In the exhibit I did</p> <p>13 some analysis by affiliate and that might</p> <p>14 show that if they did.</p> <p>15 Q. Can you think of anything that</p> <p>16 was said in your reports about that,</p> <p>17 sitting here?</p> <p>18 MR. DANIELS: Objection. Asked</p> <p>19 an answered.</p> <p>20 A. As I say in the narrative of my</p> <p>21 report, I don't recall talking about that</p> <p>22 issue. But in exhibits I do break it out</p> <p>23 by affiliates. To the extent T8 was sold</p> <p>24 by some other entity, Canada or any</p> <p>25 other, it would show up under that</p> <p style="text-align: right;">Page 398</p>
<p>1 Canada was paid on the basis of selling</p> <p>2 T4s and T5s as opposed to T8s, 9s and</p> <p>3 10s; do you have any idea about that?</p> <p>4 A. I would only have a working</p> <p>5 assumption that they are paid on their</p> <p>6 sales. They are generating sales.</p> <p>7 Q. Do you know whether or not YKK</p> <p>8 Canada was paid for selling T8s, 9s and</p> <p>9 10s that were sold by YKK affiliates in</p> <p>10 Asia?</p> <p>11 A. As far as I know in the sales</p> <p>12 record, that transaction wouldn't go</p> <p>13 through Canada, it would go through the</p> <p>14 Asian affiliates, so it wouldn't be</p> <p>15 reflected in their records, from what I</p> <p>16 can tell.</p> <p>17 Q. Do you know whether or not YKK</p> <p>18 Canada had an incentive to sell T4s or</p> <p>19 T5s as opposed to allowing or having</p> <p>20 customers switch to purchasing T8s, 9s</p> <p>21 and 10s from YKK affiliates in Asia?</p> <p>22 A. I don't know about their</p> <p>23 incentives. I just know what they were</p> <p>24 selling from the sales data.</p> <p>25 Q. Do you know whether YKK Canada</p> <p style="text-align: right;">Page 397</p>	<p>1 affiliate.</p> <p>2 Q. Do you know YKK USA was</p> <p>3 incentivized to sell T4s and T5s to its</p> <p>4 customers as opposed to sales of T8s, 9s</p> <p>5 and 10s by YKK affiliates; do you have</p> <p>6 any knowledge about that?</p> <p>7 MR. DANIELS: Objection. Asked</p> <p>8 and answered.</p> <p>9 A. I don't know about their</p> <p>10 incentives and what they were being told</p> <p>11 to do or bonus, that information wasn't</p> <p>12 provided.</p> <p>13 Q. Do you know whether or not any</p> <p>14 of the YKK North American affiliates were</p> <p>15 attempting to convince customers to stick</p> <p>16 with the T4s and T5s rather than purchase</p> <p>17 T8s, 9s and 10s from YKK Asian</p> <p>18 affiliates?</p> <p>19 A. I don't have testimony about</p> <p>20 that. I just know in the sales data what</p> <p>21 happened.</p> <p>22 Q. You just know about what sales</p> <p>23 were made?</p> <p>24 A. What sales actually happened,</p> <p>25 that they shifted from T4s and 5s to 8s</p> <p style="text-align: right;">Page 399</p>

<p>1 and 9s.</p> <p>2 Q. Let me place in front of you</p> <p>3 what we had marked as DX 458.</p> <p>4 (Defendants' 458, document Bates</p> <p>5 stamped YKK0152695, previously marked</p> <p>6 for identification.)</p> <p>7 MR. DANIELS: Attorney Wolkoff,</p> <p>8 just while we are on the record on</p> <p>9 this, if there are any documents that</p> <p>10 relate to any incentives that you</p> <p>11 suggest may exist -- I don't recall</p> <p>12 them being produced in discovery --</p> <p>13 but if there were financial incentives</p> <p>14 established by YKK for all these</p> <p>15 affiliates, we need to confirm if</p> <p>16 those documents exist because they</p> <p>17 should have been produced.</p> <p>18 So I am making that request on</p> <p>19 the record that YKK search and confirm</p> <p>20 that if such documents exist regarding</p> <p>21 the T4 and T5s, if those exit and are</p> <p>22 not produced then obviously we will</p> <p>23 have to take that up in the court.</p> <p>24 Q. Placing in front of you</p> <p>25 Defendants' Exhibit 458. You have seen</p> <p style="text-align: right;">Page 400</p>	<p>1 page?</p> <p>2 Q. Yes.</p> <p>3 A. Got it, Mike B and then Mike C</p> <p>4 at the top. Thank you.</p> <p>5 Q. Do you see there is reference</p> <p>6 at the top on page 152696 of DX 458 to</p> <p>7 "Now the really big issue."</p> <p>8 It says "Mike C and Allen</p> <p>9 advised that Arc'teryx is taking a very</p> <p>10 serious look at switching all of their</p> <p>11 Asian production to T8s. The testing</p> <p>12 they have done have led them to believe</p> <p>13 that T8 is a better product than the T4."</p> <p>14 Do you see that?</p> <p>15 A. I see that. It's written down.</p> <p>16 Q. Did you say anything in your</p> <p>17 report about customers switching to T8s,</p> <p>18 9s and 10s from T4s and 5s because they</p> <p>19 believed the quality was better?</p> <p>20 A. I don't talk about the quality</p> <p>21 issue in my report. I look at the actual</p> <p>22 sales data, as I said this morning.</p> <p>23 Q. But you knew about this Exhibit</p> <p>24 458 when you were preparing your</p> <p>25 supplemental report, correct?</p> <p style="text-align: right;">Page 402</p>
<p>1 this e-mail dated during the relevant</p> <p>2 time period, May 26th, 2009 with the</p> <p>3 subject of Arc'teryx.</p> <p>4 You have seen this in</p> <p>5 connection with your work in this matter,</p> <p>6 correct?</p> <p>7 MR. DANIELS: Objection. Lack</p> <p>8 of authentication.</p> <p>9 A. I am not positive. It looks</p> <p>10 like a topic that I recall. But I don't</p> <p>11 remember if I saw this particular one.</p> <p>12 Q. Well, let me direct your</p> <p>13 attention to page 152696. Do you see</p> <p>14 Greg Groff reports on a meeting that he</p> <p>15 was having here with a representative</p> <p>16 from Arc'teryx who he refers to as Mike</p> <p>17 B.</p> <p>18 A. I see that. Mike C.</p> <p>19 Q. Well --</p> <p>20 A. I am sorry, maybe I am missing</p> <p>21 the page.</p> <p>22 Q. In the second paragraph that</p> <p>23 says "Later on when I was meeting with</p> <p>24 Mike B," do you see that?</p> <p>25 A. The second paragraph, second</p> <p style="text-align: right;">Page 401</p>	<p>1 A. I knew it existed and I think I</p> <p>2 have seen the context of this e-mail and</p> <p>3 maybe another e-mail or something like</p> <p>4 that. But I knew about this, and I</p> <p>5 understood that this was raised.</p> <p>6 Q. And the e-mail goes on to say,</p> <p>7 "Later on when I was meeting with Mike B</p> <p>8 I asked him about it. He went into a</p> <p>9 20-minute rant about the different</p> <p>10 products with the final result that he</p> <p>11 thinks the T8 is better, and although he</p> <p>12 would rather use North American-made</p> <p>13 products their clothing is suffering from</p> <p>14 using inferior zippers."</p> <p>15 Do you see that?</p> <p>16 A. I see what's written here.</p> <p>17 Q. Okay. And you had seen that</p> <p>18 when you were doing your work and</p> <p>19 preparing your supplemental report in</p> <p>20 this matter, correct?</p> <p>21 A. I've seen this issue raised and</p> <p>22 I have also seen Arc'teryx continue to</p> <p>23 buy T4 and T5.</p> <p>24 Q. But you didn't mention anything</p> <p>25 about this; did you?</p> <p style="text-align: right;">Page 403</p>

<p>1 A. I did not mention this e-mail. 2 Q. Didn't Arc'teryx while it may 3 have continued to buy small amounts of 4 T4s and 5s switch by far the majority of 5 its purchases after this to T8s, 9s and 6 10s? 7 A. Yes. YKK offered them a lower 8 price T8 and sold into excluded market, 9 and they switched. 10 Q. This e-mail is talking about 11 the T4s being inferior in quality to the 12 T8; do you see that? 13 A. I see what is written in the 14 e-mail. 15 Q. So you see that, right? 16 A. I do see that. And I know they 17 bought millions of T4 and 5. 18 Q. But you didn't discuss -- they 19 didn't buy millions of T4s and T5s -- 20 A. Over the life of their 21 relationship? 22 Q. Let me finish the question. 23 A. Thank you. 24 Q. After they shifted their 25 garment manufacturing predominantly to</p> <p style="text-align: right;">Page 404</p>	<p>1 potential customers, that is garment 2 manufacturers, whether they had quality 3 issues with the T4s and T5s as compared 4 to other alternatives? 5 A. I didn't talk to garment 6 manufacturers, so no. 7 Q. Did you ask for any records 8 about quality issues that garment 9 manufacturers were having with the T4s 10 and T5s during the relevant time period, 11 so you could look at the issue? 12 A. I asked for all the records 13 available in the case and did searches on 14 the database. So, yes, I asked for all 15 the records in the case. 16 Q. But you weren't given any 17 records with regard to quality issues, 18 were you, sir, by the plaintiffs -- 19 MR. DANIELS: Objection as to 20 form. 21 Q. -- quality issues with the T4s 22 and T5s? 23 MR. DANIELS: Objection as to 24 form. 25 A. I was given e-mails such as</p> <p style="text-align: right;">Page 406</p>
<p>1 Asia, Arc'teryx reduced substantially its 2 purchases of T4s and T5s, correct? 3 A. Yes. Because T8 was too 4 priced. 5 Q. And according to this, 6 Arc'teryx believed that the T4 had sewn 7 into its products made their clothing 8 suffer from using inferior zippers, 9 correct? 10 A. That's what this e-mail says. 11 Q. You didn't discuss this issue 12 in your report; did you? 13 A. I did not discuss this e-mail 14 in my report. 15 Q. Did you try to examine or 16 investigate whether other garment 17 manufacturers also had quality issues 18 with the T4s and T5s compared to other 19 alternatives? 20 A. I considered the record and I 21 talked to Mr. Press about anything that 22 was going on in the actual world that 23 existed. 24 Q. Okay. Did you try to examine 25 or investigate by talking to customers or</p> <p style="text-align: right;">Page 405</p>	<p>1 this. So I remember one-offs of people 2 talking about it. But again, I also 3 recognize that YKK presented both of them 4 as options. And AquaGuard didn't suggest 5 one was inferior to the other, and also, 6 of course, purchased 40 million meters 7 over the life of the relationship. 8 Q. These documents I have been 9 showing you came from defendants. Did 10 the plaintiffs provide you with any data 11 or information about quality issues that 12 customers were having in the real world 13 with the T4s and T5s during the relevant 14 time period? 15 MR. DANIELS: Objection as to 16 form. 17 A. I would have to go back and 18 look at which Bates stamps I am referring 19 to, but I do recall talking to Mr. Press 20 about actual issues that came up in the 21 actual world. 22 Q. Did you take any notes about 23 those conversations? 24 A. As I said this morning, no. 25 Q. Did you write anything in your</p> <p style="text-align: right;">Page 407</p>

<p>1 reports about quality, the quality of T4s 2 and T5s? 3 A. I did not talk about the 4 quality, the technical issues, between 5 the two. 6 Q. Let me show you what's been 7 marked as Defendants' Trial Exhibit 575. 8 (Defendants' Exhibit 575, 9 document Bates stamped YKK0267341, 10 previously marked for identification.) 11 Q. Do you see that down below 12 there is an e-mail on this page 267341? 13 MR. DANIELS: Objection, lack of 14 authentication. 15 Q. From -- 16 MR. WOLKOFF: I was in the 17 middle of the question. 18 THE VIDEOGRAPHER: Counsel, I 19 apologize, can we please go off the 20 record for one second, I lost one of 21 my recorders. 22 MR. WOLKOFF: Yes. 23 THE VIDEOGRAPHER: Now going off 24 the record. The time is 12:24 p.m. 25 [Off the record.]</p> <p style="text-align: right;">Page 408</p>	<p>1 just didn't discuss anything about it in 2 your report; did you? 3 A. I didn't talk about this 4 e-mail. Again, I recognized in my report 5 that they were a 40 million meter 6 supplier. But I did not directly talk 7 about quality issues, technical issues, 8 like that, no. 9 Q. You didn't directly talk about 10 -- the word "quality" doesn't appear in 11 your report at all; does it? 12 A. Not to my knowledge. That's 13 what I am referring to. I don't directly 14 talk about it this way. I looked at them 15 as a supplier. 16 Q. Do you know whether or not 17 customers would have purchased T4s or T5s 18 if they weren't offered T8s, 9s and 10s 19 in light of purported quality issues with 20 the T4s and T5s, is that an issue that 21 you analyzed at all in your report? 22 A. Well, it's an issue that I 23 analyzed in the but-for analysis, that 24 they could achieve the sales which I did 25 analyze.</p> <p style="text-align: right;">Page 410</p>
<p>1 THE VIDEOGRAPHER: We are going 2 back on the record. The time is 3 p.m. 4 BY MR. WOLKOFF: 5 Q. I place in front of you, 6 Mr. Donohue, Defendants' Exhibit 575. Do 7 you see the first e-mail is from a Lee 8 Smith of YKK USA to Michael Blunt, during 9 the relevant time period May 31, 2012, 10 the subject is Uretek? 11 A. I see that. 12 Q. And Mr. Smith said that he 13 needed to discuss with Mr. Blunt some 14 issues; do you see that? 15 A. I do. 16 Q. And the very first issue that 17 he listed was "Quality issues are 18 rampant," correct? 19 A. That's what the e-mail says. 20 Q. And the subject of e-mail is 21 "Uretek," right? 22 A. Correct. 23 Q. Again, you didn't put anything 24 about quality issues with the T4s and 25 T5s, whether rampant or not rampant, you</p> <p style="text-align: right;">Page 409</p>	<p>1 Q. But not in terms of quality, 2 you didn't analyze any purchaser 3 decisions in terms of quality of the T4s 4 and T5s compared to competitors; did you? 5 A. Well, Uretek's demonstrated 6 ability to supply 40 million meters over 7 time is compared to competitors, yes. 8 So indirectly you're looking at 9 what their ability is to make these sales 10 and they demonstrated they could be a 11 supplier. They continued to be a 12 supplier. 13 Q. You keep referring to millions 14 of sales outside of the relevant time 15 period. I am just asking you about the 16 relevant time period. 17 Did you discuss in your report 18 anywhere the possibility of customers not 19 purchasing T4s or T5s, even if offered 20 T8s, 9s and 10s due to pricing, delivery 21 time or quality issues, is that discussed 22 anywhere in the narrative? 23 MR. DANIELS: Objection as to 24 form. 25 A. Well, the narrative talks about</p> <p style="text-align: right;">Page 411</p>

<p>1 the ability to make the sale, the ability 2 to capture the sale and why. 3 Q. Do you talk anywhere in your 4 narrative about customers deciding not to 5 purchase T4s or T5s, that possibility, 6 even if they weren't offered T8s, 9s and 7 10s because of pricing issues, delivery 8 issues and quality issues, do you discuss 9 that in the narrative of your report? 10 MR. DANIELS: Objection. Asked 11 and answered. 12 A. In the but-for section of my 13 first report, as well as in my second 14 report, I talk about why Uretek would 15 capture the sales at that level. I did 16 not address particular e-mails or quality 17 issue e-mails like this. But I do 18 address this issue about their ability to 19 make it. 20 Q. In your supplemental report 21 that is after the jury's verdict, you 22 didn't discuss pricing issues that 23 customers were having with the T4s and 24 T5s, did you, in the narrative? 25 A. Well, the but-for section is</p> <p style="text-align: right;">Page 412</p>	<p>1 Q. In your supplemental report, 2 which is after the jury's verdict, you 3 don't discuss explicitly in the narrative 4 of your report pricing issues that 5 customers may have been having or did 6 have with the T4s and T5s during the 7 relevant time period; did you? 8 MR. DANIELS: Objection to form. 9 Objection, asked and answered. 10 A. Aside from modeling what price 11 they would capture them at, I did not 12 talk about these pricing e-mails and 13 things like that. No, I didn't go into 14 that granular detail. I did so at a 15 macro level with those charts in my 16 discussions of those charts. 17 Q. Those charts aren't your 18 narrative; are they, sir? 19 MR. DANIELS: Objection as to 20 form. 21 A. Well, they are in the written 22 part of my report. But again, the charts 23 are also discussed in words. So I can 24 point to paragraphs around the charts. 25 Q. In your supplemental report,</p> <p style="text-align: right;">Page 414</p>
<p>1 still in my second report, so indirectly 2 I do, because it's recognizing can you 3 make those sales. 4 Q. In your supplemental report, 5 after the jury's verdict, you didn't 6 discuss pricing issues that customers 7 were having or may have been having with 8 the T4s and T5s during the relevant time 9 period; do you? 10 A. Well, my chart where I analyze 11 the profits of the 500 million dollars 12 talks about using a T8 price to recognize 13 any pricing issues. 14 Q. In your supplemental report, 15 that is after the jury's verdict, you 16 didn't discuss in the narrative of the 17 report pricing issues that customers may 18 have been having with the T4 or T5s 19 during the time period of the relevant 20 time period? 21 MR. DANIELS: Objection. Asked 22 and answered. 23 A. In the narrative of the report 24 I discuss what they would have been sold 25 for, which captures this issue.</p> <p style="text-align: right;">Page 413</p>	<p>1 that is after the jury's verdict, you 2 don't discuss explicitly in the narrative 3 of your report delivery time issues that 4 customers may have been having or did 5 have with the T4s and T5s during the 6 relevant time period; do you? 7 MR. DANIELS: Objection to form. 8 Objection, asked and answered. 9 A. In my supplemental report I am 10 not discussing delivery times explicitly, 11 no. 12 Q. In your supplemental report, 13 which is, that is after the jury's 14 verdict, you don't discuss explicitly in 15 the narrative of your report quality 16 issues that customers were having or may 17 have been having with the T4s and T5s 18 during the relevant time period; did you? 19 MR. DANIELS: Objection. Asked 20 and answered. 21 A. I am not talking about quality 22 in my report. I am talking about what 23 they can make, and I look at it that way. 24 Q. Do you know whether or not YKK 25 brought issues that customers were having</p> <p style="text-align: right;">Page 415</p>

<p>1 with the quality of T4s or T5s to the 2 attention of Stuart Press? 3 A. I believe there was instances 4 of that, yes. Those are some of the 5 things that we talked about. 6 Q. You didn't discuss anywhere in 7 your report the fact that during the 8 relevant time period YKK brought issues 9 that customers were having with the 10 quality of T4s and T5s to the attention 11 of Stuart Press; did you? 12 A. I don't believe I go into that 13 detail in my report about that issue, 14 correct. 15 Q. Now, you say that there are 16 about 66 million meters of YKK laminated 17 zippers sold to high-end outerwear 18 customers, correct? 19 A. Yes, 65 million. 20 Q. And that is over about an 21 eight-year time period, correct? 22 A. Correct. 23 Q. In your report submitted on 24 June 7th, 2017, so that's incorporated 25 into your supplemental report, correct,</p> <p style="text-align: right;">Page 416</p>	<p>1 Exhibit 21A-R3, 7.4 million T4s and T5s 2 was Uretex's high watermark in 2005 -- 3 happened to be in 2005, correct? 4 A. Yes. 5 Q. And the 7.4 million meters was 6 by far the most water-resistant zippers 7 Uretex laminated in any given year, 8 correct? 9 A. Yes, in the actual scenario, 10 that was their peak. 11 Q. So if, in fact, these 65 12 million meters that you purportedly 13 identify had to be laminated by Uretex, 14 they would have had to have increased 15 their production by at least 70 percent a 16 year, correct? 17 A. 70 percent, yes. 18 Q. Let me place in front of you DX 19 44. 20 (Defendants' Exhibit 44, 21 document Bates stamped YKK0703047, 22 previously marked for identification.) 23 Q. Do you see it's a report with 24 regard to Uretex at YKK all the way back 25 in May of 1999?</p> <p style="text-align: right;">Page 418</p>
<p>1 sir? 2 A. I already have that or was it 3 already marked? Would you like it 4 marked? 5 Q. We don't need to mark it. It's 6 been marked in the prior deposition. 7 A. That's fine. 8 Q. So turning to paragraph 151 of 9 your report dated June 7th, 2017, you say 10 that "If YKK had sold T4s and T5s in the 11 amount of the 65 million meters of YKK 12 laminated zippers to customers instead of 13 T8s, 9s and 10s, then over an eight-year 14 period on an annual basis that would 15 require a maximum capacity at Uretex of 16 about 12 million meters to achieve the 17 additional sales," correct? 18 A. Correct. 19 Q. But the most that Uretex had 20 ever laminated was only a little bit more 21 than half of that number of meters, and 22 that was in 2005, correct? 23 A. Correct. The 7.4 million in 24 2005. 25 Q. Specifically, looking at your</p> <p style="text-align: right;">Page 417</p>	<p>1 MR. DANIELS: Objection. Lack 2 of authentication. 3 A. Yes. 4 Q. And you've seen this report 5 before, correct? 6 A. Correct. 7 Q. Let me direct your attention to 8 page 703050, at the top there is a few 9 paragraphs under the heading "Uretex 10 Manufacturing," correct? 11 A. Correct. 12 Q. And the first paragraph under 13 that heading says "The Uretex factory is 14 old and cramped. The majority of the 15 machinery is 30-years-old at least. Some 16 machinery is newer (10 to 15-years-old). 17 The building itself is far older. It is 18 estimated to have been built in the 19 1930s." 20 That's what the report says, 21 correct? 22 A. That's what those lines say, 23 yes. 24 Q. And that was in 1999. The 25 plant didn't get any newer in February</p> <p style="text-align: right;">Page 419</p>

<p>1 2009 through September 2019; did it, sir?</p> <p>2 MR. DANIELS: Objection as to</p> <p>3 form.</p> <p>4 A. No. The plant itself and time</p> <p>5 marched on, yes.</p> <p>6 Q. You acknowledge, sir, that</p> <p>7 Uretek has only -- strike that.</p> <p>8 You acknowledge in your</p> <p>9 supplemental report -- strike that.</p> <p>10 You acknowledge that Uretek,</p> <p>11 during the relevant time period, had only</p> <p>12 two zipper machines, correct? Two</p> <p>13 machines laminating zippers during the</p> <p>14 relevant time period?</p> <p>15 A. I need to go back and look to</p> <p>16 confirm because multiple machines are</p> <p>17 used to do the steps in the process at</p> <p>18 times. But I know they had more than</p> <p>19 one. Yes, I would have to look back at</p> <p>20 my report.</p> <p>21 Q. If you look at paragraph 149 --</p> <p>22 so two paragraphs above the paragraph I</p> <p>23 just was asking you about -- you say in</p> <p>24 the third, second line running onto the</p> <p>25 third line that Uretek had "two dedicated</p> <p style="text-align: right;">Page 420</p>	<p>1 little cost," correct?</p> <p>2 A. Correct.</p> <p>3 Q. You didn't say anything about</p> <p>4 having excess capacities in those</p> <p>5 machines in your reports; did you?</p> <p>6 MR. DANIELS: Objection to form.</p> <p>7 A. Well, at paragraph 150 I</p> <p>8 explained that increased capacity could</p> <p>9 have included many things such as longer</p> <p>10 run times, higher volumes, wider rolls</p> <p>11 and if required adding more machines.</p> <p>12 Q. Yeah, but you didn't say</p> <p>13 anything about these other machines</p> <p>14 having excess capacity; did you, sir?</p> <p>15 A. "The existing machines could</p> <p>16 run" --</p> <p>17 Q. It's fine.</p> <p>18 A. I will keep reading.</p> <p>19 -- could run three shifts --</p> <p>20 MR. DANIELS: You have to let</p> <p>21 the witness answer the question.</p> <p>22 A. -- let me finish reading.</p> <p>23 "Run three shifts for longer,</p> <p>24 but typically have not been utilized at</p> <p>25 this higher level of production."</p> <p style="text-align: right;">Page 422</p>
<p>1 zipper machines," correct?</p> <p>2 A. Yes.</p> <p>3 Q. You claim that Uretek had other</p> <p>4 machines that could be converted into</p> <p>5 zipper laminating machines for YKK,</p> <p>6 correct?</p> <p>7 A. That was one of the possible</p> <p>8 solutions, yes.</p> <p>9 Q. If those other machines had</p> <p>10 been converted to zipper laminating</p> <p>11 machines, then those machines couldn't be</p> <p>12 used for what they were being used for,</p> <p>13 that is Uretek's other commercial</p> <p>14 activities, correct?</p> <p>15 A. In that example, but there was</p> <p>16 capacity on those machines.</p> <p>17 Q. Yeah.</p> <p>18 A. So that assumes, of course,</p> <p>19 that it was fully utilized and they</p> <p>20 weren't fully utilized. And that is one</p> <p>21 solution.</p> <p>22 Q. That's not what you said in</p> <p>23 your report. You said, "All existing</p> <p>24 lamination machines are also capable of</p> <p>25 being converted into zipper machines at</p> <p style="text-align: right;">Page 421</p>	<p>1 So yes, they have. It's the</p> <p>2 next sentence.</p> <p>3 Q. You think that that says that</p> <p>4 the other machines had excess capacity,</p> <p>5 sir? They weren't being used at their</p> <p>6 typical capacity levels?</p> <p>7 A. Yes. I think if you say</p> <p>8 something is not being used at its</p> <p>9 capacity level, it has other capacity.</p> <p>10 Q. We will let the jury decide on</p> <p>11 that one.</p> <p>12 MR. DANIELS: Objection to the</p> <p>13 sarcasm.</p> <p>14 Q. In any event, sir, if you</p> <p>15 converted those other machines over to</p> <p>16 zipper laminating machines, they wouldn't</p> <p>17 be able to be used for what they were</p> <p>18 doing, that is Uretek's other commercial</p> <p>19 activities, correct?</p> <p>20 A. In isolation, if you took one</p> <p>21 out of service and made it do something</p> <p>22 else, yes, you would take it away from</p> <p>23 something else.</p> <p>24 Q. Did you account anywhere for</p> <p>25 any lost revenue that Uretek would have</p> <p style="text-align: right;">Page 423</p>

<p>1 had, if it had put one of its other 2 machines into use as a zipper laminating 3 machine for T4s and T5s during the 4 relevant time period? 5 A. No, because it didn't need to 6 -- one, it had excess capacity. And two, 7 it didn't need to do that -- 8 Q. So the answer is no? 9 A. -- to reach capacity. Well, it 10 didn't need to. There was no loss. I 11 didn't account for other loss because 12 there isn't other loss. 13 Q. Did you check to determine 14 whether Uretek was bound by contract with 15 any third-parties to manufacture products 16 for them with these machines that you say 17 could be converted over into zipper 18 laminating machines? 19 MR. DANIELS: Objection. Again, 20 this whole line of questioning was 21 already covered in prior depositions. 22 It has nothing to do with the jury's 23 verdict of January 2023. You are 24 hoeing old ground. 25 A. I am sorry, can you reread your</p> <p style="text-align: right;">Page 424</p>	<p>1 having contracts with other third parties 2 that required the use of these other 3 machines in order to produce products 4 pursuant to those contracts? 5 A. I just had an understanding 6 from Mr. Press that they had other 7 business lines. I am sure there were 8 contracts. I am sure some were spec. 9 But I understood there were other 10 businesses that would need to be 11 accounted for in the capacity analysis. 12 Q. Looking at figure 6 on page 17 13 of your supplemental report. You point 14 out that sales of T4s and T5s had 15 considerably scaled down beginning in 16 2009, and going up through the end of the 17 relevant time period, correct? 18 A. Correct. 19 Q. But it's true that Uretek 20 couldn't keep up even with that scaled 21 down demand of T4s and 5s, let alone 22 manufacture an additional 65 million 23 meters, correct? 24 A. In the but-for world, I have 25 already concluded that they could keep up</p> <p style="text-align: right;">Page 426</p>
<p>1 question, please? 2 Q. Did you make any determination 3 whether Uretek was bound by contract with 4 any third parties to manufacture products 5 for them with these machines that you say 6 could be converted over to zipper 7 laminating machines? 8 A. In my discussions with 9 Mr. Press I understood that they, that 10 these would be available if needed for 11 capacity. So he did not suggest that 12 they were not available or committed to 13 someone else. 14 Q. Did you ask him whether Uretek 15 had any contracts with any third parties 16 to manufacture products for them with 17 these machines? 18 A. I didn't need to ask him if 19 Uretek had other business. I knew they 20 had other business. And I certainly 21 asked him, could you reach these capacity 22 levels with the other business and he 23 said yes. 24 Q. I am asking you whether or not 25 you had any information about Uretek</p> <p style="text-align: right;">Page 425</p>	<p>1 with that demand. In the actual world, 2 they had much less volume, less 3 inventory, things of that nature. So I 4 appreciate that questions were raised 5 about particular orders and things like 6 that. 7 Q. Uretek, in the real world, 8 couldn't keep up even with the scaled 9 down demand during the relevant time 10 period for T4s and T5s let alone laminate 11 an additional 65 million meters, correct, 12 sir? 13 MR. DANIELS: Objection. Asked 14 and answered. 15 A. I had understood that they kept 16 up with their demand and running at a 17 lower production resulted in some 18 instances that we talked about this 19 morning. But they successfully were 20 selling throughout this time period. 21 Q. Let me place in front of you 22 Defendants' Exhibit 392, a trial exhibit. 23 (Defendants' 392, document Bates 24 stamped YKK016984, previously marked 25 for identification.)</p> <p style="text-align: right;">Page 427</p>

<p>1 Q. You read this e-mail in 2 connection with your work in this matter, 3 correct? 4 A. Yes. 5 MR. DANIELS: Objection. Lack 6 of authentication. 7 Q. According to your figure 6 on 8 page 17 of your supplemental report, how 9 many meters of T4s and T5s did Uretek 10 have to laminate in the year 2008? 11 A. Just for Arc'teryx, 420,000 12 plus. It's probably a little more. 13 Q. And how many meters did they 14 have to laminate in general overall for 15 T4s and T5s in that year 2008; do you 16 know? 17 A. In 2008, I would need to look 18 at my exhibits to tell me the total 19 number. 20 Q. It was a lot less than 7 21 million; wasn't it? 22 A. Yes. They were not getting 23 orders for the excluded markets, so it 24 was much lower than 7 million. 25 Q. And yet given the slow demand,</p> <p style="text-align: right;">Page 428</p>	<p>1 MR. DANIELS: Objection as to 2 form. 3 A. No. And I don't know if this 4 e-mail suggests that they didn't keep up 5 with it. Mr. Press told me that they 6 filled their orders. That they were 7 certainly hamstrung by not having 8 significant volume and inventory. But 9 they were filling their orders and yes 10 things happen in production that you need 11 to deal with. 12 Q. But this e-mail from YKK went 13 to Stuart Press talking about Uretek 14 being so far behind that the YKK machines 15 had to be stopped because they didn't 16 have anything to work on, correct? 17 A. That's what this -- 18 THE VIDEOGRAPHER: Counselor, 19 again, I lost power. I think there is 20 something going on with the 21 electricity here. I lost totally 22 power. 23 MR. WOLKOFF: Can you answer, 24 and we will just have it on the 25 machine?</p> <p style="text-align: right;">Page 430</p>
<p>1 as Defendants' Exhibit 392 reflects, some 2 of the shipments from Uretek were so late 3 that the YKK machines were stopped due to 4 lack of material to work on; do you see 5 that? 6 A. Yes, I see this e-mail. 7 Q. Did you -- 8 A. This being 392. 9 Q. Did you say about that in your 10 report, that Uretek was so far behind in 11 keeping up with even the lower demand in 12 2008, that the YKK machines had to be 13 stopped because they didn't have anything 14 to work on from Uretek? 15 A. I didn't talk about it in that 16 granular detail. And again, that is 17 actual with the much reduced volumes. 18 And I talked with Mr. Press about these 19 one-off instances where they needed to do 20 things to get orders together. 21 Q. Did you discuss in your reports 22 that Uretek couldn't even keep up with 23 the lower demand for the T4s and T5s, let 24 alone laminate an additional 65 million 25 meters during the relevant time period?</p> <p style="text-align: right;">Page 429</p>	<p>1 A. I am sorry, can you say it 2 again? 3 MR. DANIELS: Hold on, you're 4 going to continue this deposition 5 without video? 6 MR. WOLKOFF: I was just going 7 to let him finish the answer. Given 8 that he doesn't remember the question, 9 we will wait for the video. 10 [Off the record.] 11 12 [Whereupon, at 12:49 p.m., a 13 luncheon recess was taken.] 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 431</p>

<p>1 AFTERNOON SESSION</p> <p>2 1:31 p.m.</p> <p>3 JAMES J. DONOHUE,</p> <p>4 the Witness herein, was examined and</p> <p>5 testified as follows:</p> <p>6 THE VIDEOGRAPHER: We are back</p> <p>7 on the record. The time is 1:31 p.m.,</p> <p>8 and we are now going back on the</p> <p>9 record.</p> <p>10 EXAMINATION (Cont'd)</p> <p>11 BY MR. WOLKOFF:</p> <p>12 Q. The videographer lost power</p> <p>13 when you were, Mr. Donohue, answering a</p> <p>14 question I had asked and so we took a</p> <p>15 short lunch break to allow him to repower</p> <p>16 up.</p> <p>17 So let me return to the</p> <p>18 question I was asking and you were in the</p> <p>19 middle of answering when he lost power.</p> <p>20 So directing your attention to</p> <p>21 DX 392, this particular e-mail talking</p> <p>22 about Uretek being late such that the YKK</p> <p>23 machines were stopped due to a lack of</p> <p>24 material to work on was an e-mail from</p> <p>25 YKK to Stuart Press himself at Uretek,</p> <p style="text-align: right;">Page 432</p>	<p>1 A. Well, the definition is about</p> <p>2 the definition of high-end outerwear. So</p> <p>3 it's not about what's purchased, it's</p> <p>4 just a definition of high-end outerwear.</p> <p>5 Maybe I just don't understand your</p> <p>6 question.</p> <p>7 Q. Well, the definition of</p> <p>8 high-end outerwear not only includes the</p> <p>9 characteristics or functions of the</p> <p>10 garments but also says, "As they relate</p> <p>11 to maximizing profits for all parties in</p> <p>12 the global market," correct?</p> <p>13 A. It does say that.</p> <p>14 Q. So in order to satisfy the</p> <p>15 maximizing profits part of the definition</p> <p>16 of high-end outerwear, customers would</p> <p>17 have had to have been willing to purchase</p> <p>18 the T4s and T5 zippers in order for them</p> <p>19 to be sewn or considered as sewn into</p> <p>20 high-end outerwear, correct?</p> <p>21 A. I don't see that specific</p> <p>22 detail in the definition. It's just the</p> <p>23 characteristics as they relate to</p> <p>24 maximizing profits.</p> <p>25 Q. So in your work you have not</p> <p style="text-align: right;">Page 434</p>
<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And the subject was "Late</p> <p>4 Shipment," right?</p> <p>5 A. It was.</p> <p>6 MR. WOLKOFF: I would like to</p> <p>7 have marked as Exhibit 13 for</p> <p>8 identification the jury verdict in</p> <p>9 this matter.</p> <p>10 (Donohue Exhibit 13, jury's</p> <p>11 verdict and definition of the meaning</p> <p>12 of "high-end outerwear" was so marked</p> <p>13 for identification, as of this date.)</p> <p>14 Q. Placing in front of you what we</p> <p>15 had marked as Exhibit 13 for</p> <p>16 identification. You recognize this as</p> <p>17 the jury's verdict and definition of the</p> <p>18 meaning of "high-end outerwear"?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Now, in order to satisfy the</p> <p>21 maximizing profits part of the jury's</p> <p>22 definition of high-end outerwear,</p> <p>23 customers would have to be willing to</p> <p>24 purchase the T4 and T5s zippers for them</p> <p>25 to be high-end outerwear, correct?</p> <p style="text-align: right;">Page 433</p>	<p>1 taken into account whether in order to</p> <p>2 satisfy the maximizing profits part of</p> <p>3 the definition of high-end outerwear,</p> <p>4 customers would have had to have been</p> <p>5 willing to purchase the T4 and T5 zippers</p> <p>6 in order to sell them into their</p> <p>7 garments, correct?</p> <p>8 A. Well, in my work, in my damage,</p> <p>9 calculation, yes, I concluded they are</p> <p>10 willing to purchase them.</p> <p>11 Q. But I am not asking you what</p> <p>12 you concluded, sir, and whether or not</p> <p>13 they are willing to purchase them. There</p> <p>14 is a disagreement, believe it or not,</p> <p>15 about that.</p> <p>16 What I am asking you is in</p> <p>17 order to satisfy the maximizing profits</p> <p>18 part of the definition of high-end</p> <p>19 outerwear, as determined by the jury</p> <p>20 reflected in Donohue Exhibit 13,</p> <p>21 customers would have to be willing to</p> <p>22 purchase the T4 and T5 zippers for their</p> <p>23 garments, correct?</p> <p>24 A. Well, customers -- there is two</p> <p>25 markets here. So customers may only</p> <p style="text-align: right;">Page 435</p>

<p>1 purchase non-high-end or they may 2 purchase high-end. 3 Q. I know, but I am talking about 4 the definition of high-end outerwear. In 5 order to satisfy the maximizing profits 6 definition of high-end outerwear, 7 customers would have to be willing to 8 purchase the T4 or T5 zippers for them to 9 be sewn into their outerwear garments to 10 be considered as high-end outerwear; 11 correct? 12 MR. DANIELS: Objection as to 13 form. 14 A. I still don't think I am 15 understanding your question because it's 16 a definition, it's not -- 17 Q. Okay. 18 A. -- it's not saying what 19 happened. It's a definition. So maybe I 20 am just -- 21 Q. Well, I don't understand your 22 answer. In order to satisfy the 23 maximizing profits' part of the 24 definition of high-end outerwear, did you 25 in your work consider whether customers</p> <p style="text-align: right;">Page 436</p>	<p>1 outerwear have refused to purchase T4s or 2 T5s either because of price, delivery or 3 other issues, correct? 4 MR. DANIELS: Objection as to 5 form. 6 Q. You agree with that? 7 A. No, no, I don't agree with 8 that. In my analysis I found that given 9 the importance of this patented feature 10 and the billion dollar market, the \$500 11 million market for outerwear and the lack 12 of alternatives, the customers would 13 purchase T4 and 5. 14 Q. So your opinion is that the 15 customers who bought 65 million meters of 16 T8s, 9s and 10s, if they were told they 17 couldn't buy T8s, 9s and 10s would have 18 all purchased every single meter, 65 19 million meters without turning to 20 alternatives? 21 A. Correct. I claim all the T4 22 and 5s that were high-end outerwear. 23 Q. Now, you recognize that even 24 though you didn't state what YKK's market 25 share was for T8s, 9s and 10s, it wasn't</p> <p style="text-align: right;">Page 438</p>
<p>1 would be willing to purchase the T4 or T5 2 zippers as opposed to some other 3 laminated zippers for their outerwear 4 garments in order to make them high-end 5 outerwear? 6 A. For my work, yes. Some were 7 purchased and deemed high-end outerwear, 8 including T4 and T5s, and some other 9 zippers were not. 10 Q. Now, you would agree that if 11 customers had been told that they cannot 12 purchase T8s, 9s and 10s for their 13 high-end outerwear that at least some of 14 them would have refused to buy T4s or T5s 15 either because of price or delivery times 16 or other factors, correct? 17 A. Well, again, I address price in 18 my report. I recognize that price may be 19 important to customers and so I am only 20 capturing the price that was achieved. 21 Q. Let me ask you to answer my 22 question, please. If customers were told 23 that they couldn't purchase T8s, 9s and 24 10s for their outerwear garments, at 25 least some of the customers for high-end</p> <p style="text-align: right;">Page 437</p>	<p>1 100 percent, correct? 2 A. It wasn't 100. It was high in 3 the one-off documents, but it wasn't 100 4 percent. But it was 100 percent of the 5 500 million in outerwear, yes. 6 Q. But it wasn't 100 percent of 7 the outerwear zipper market, was it, sir, 8 for high-end outerwear? 9 MR. DANIELS: Objection as to 10 form. 11 A. No, it would not be all of it. 12 Q. And you don't state what it 13 was, do you, in your report? 14 A. What the global, what the 15 zipper market share was? 16 Q. You don't state what YKK's 17 market share was for T8s, 9s and 10s in 18 high-end outerwear, you don't say it 19 anywhere; do you -- 20 MR. DANIELS: Objection to the 21 form. 22 Q. -- in your reports? 23 A. No, I don't state a number for 24 you, that's correct. I don't state a 25 number in my report.</p> <p style="text-align: right;">Page 439</p>

<p>1 Q. You just know it wasn't 100 2 percent, correct?</p> <p>3 A. It wasn't 100 percent with 4 respect to the others, but they certainly 5 purchased, the customer purchased all of 6 that 500 million that I am allocating in 7 the supplemental report.</p> <p>8 Q. We're not circular, sir. I am 9 not asking you about the 500 million. 10 The customers purchased the 500 million. 11 That doesn't mean that YKK could have 12 sold everything to those customers.</p> <p>13 What I am asking you, sir, is 14 you don't say anything in your report 15 about YKK's market share for T8s, 9s and 16 10s. You just know that it wasn't 100 17 percent, there were other competitors out 18 there selling water-resistant laminated 19 zippers, correct?</p> <p>20 A. Correct. There were others out 21 there. When YKK was selling this 500 22 million, there were other competitors out 23 there at the time.</p> <p>24 Q. T4s and T5s couldn't be 25 considered zippers for high-end outerwear</p> <p style="text-align: right;">Page 440</p>	<p>1 don't --</p> <p>2 Q. I am not assuming that at all, 3 sir. What I am asking you is, if 4 customers wouldn't purchase T4s or T5s 5 then the T4s or T5s couldn't be 6 maximizing profits and thus be zippers 7 for high-end outerwear, correct?</p> <p>8 MR. DANIELS: Objection as to 9 form.</p> <p>10 A. I am sorry, I am not 11 understanding your question. It seems 12 like a hypothetical. If you're asking me 13 to assume that they are not in the market 14 or something -- I just don't understand 15 your question.</p> <p>16 Q. Okay. Assume that customers, 17 for whatever reason, be it higher price, 18 longer delivery times, quality issues, 19 were told that they couldn't buy T8s, 9s 20 and 10s and, therefore, refused to 21 purchase T4s or 5s because of those 22 issues. Those T4s and T5s would not be 23 zippers for high-end outerwear, correct, 24 because the customers refused to buy 25 them?</p> <p style="text-align: right;">Page 442</p>
<p>1 in terms of maximizing profits, if 2 customers wouldn't have purchased them; 3 isn't that right, sir?</p> <p>4 A. Well, I don't understand your 5 question. Customers did purchase them, 6 even in the actual world.</p> <p>7 Q. They didn't purchase all of 8 them. So answer my question, please. 9 This is getting frustrating because you 10 just keep pointing back to 500 million 11 meters, which has nothing to do with my 12 questions.</p> <p>13 MR. DANIELS: Objection.</p> <p>14 Q. In order to be -- strike that. 15 In order to maximize profits, 16 T4s and T5s wouldn't be zippers for 17 high-end outerwear if customers wouldn't 18 purchase them, that would not constitute 19 maximizing profits in the jury's 20 definition of high-end outerwear, 21 correct?</p> <p>22 MR. DANIELS: Objection as to 23 form.</p> <p>24 A. Your question just assumes that 25 customers wouldn't purchase them. So I</p> <p style="text-align: right;">Page 441</p>	<p>1 A. If they are used in high-end 2 outerwear, they would still be high-end 3 outerwear.</p> <p>4 Q. And that's how you defined 5 high-end outerwear for use in your 6 report, correct?</p> <p>7 A. I defined it using the jury's 8 definition.</p> <p>9 Q. Well, no, you didn't, and 10 that's what I am asking you.</p> <p>11 MR. DANIELS: Objection.</p> <p>12 Q. Did you take into account -- 13 strike that.</p> <p>14 Did you say anything in your 15 report about an order to maximize profits 16 and satisfy that part of the definition 17 of high-end outerwear customers would 18 have to be willing to purchase the 19 zippers, the T4s and T5s?</p> <p>20 A. In my report I calculate them, 21 the customers purchasing T4s and T5s.</p> <p>22 Q. But I am not asking you whether 23 or not customers purchased T4s and T5s, 24 so let's stop going around the barn. 25 Did you say anywhere in your</p> <p style="text-align: right;">Page 443</p>

<p>1 report that in order to satisfy the</p> <p>2 maximizing profits part of the definition</p> <p>3 of high-end outerwear, customers would</p> <p>4 have to have been willing to purchase T4s</p> <p>5 and T5s?</p> <p>6 A. I don't recall a quote like</p> <p>7 that in my report, but in my calculations</p> <p>8 and in my words I explain how they would</p> <p>9 purchase them in lieu of T8s, 9s and 10s.</p> <p>10 Q. Your opinion of overall damages</p> <p>11 didn't change after the jury's verdict</p> <p>12 from where it was from before the jury's</p> <p>13 verdict, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Your opinion of the number of</p> <p>16 meters of high-end outerwear zippers</p> <p>17 didn't change after the jury's verdict</p> <p>18 from where it was before the verdict, 65</p> <p>19 million, correct?</p> <p>20 A. Yes. In my prior answer that</p> <p>21 is what I was referring to. The 65</p> <p>22 million is still 65 million. I found</p> <p>23 that my analysis was consistent with the</p> <p>24 jury verdict.</p> <p>25 Q. So your opinion didn't change</p> <p style="text-align: right;">Page 444</p>	<p>1 record was read back as follows:</p> <p>2 "Question: So your opinion</p> <p>3 didn't change at all from before the</p> <p>4 jury's verdict or after the jury's</p> <p>5 verdict, your opinions?</p> <p>6 "Answer: My 65 million doesn't</p> <p>7 change. I, obviously, explain why</p> <p>8 that is the case in my supplemental</p> <p>9 report."</p> <p>10 A. In the supplemental report I</p> <p>11 went through why that's the case. But</p> <p>12 you are correct that mathematically the</p> <p>13 65 million is the same number.</p> <p>14 Q. Your opinion of overall damages</p> <p>15 didn't change from before the jury's</p> <p>16 verdict and after the jury's verdict,</p> <p>17 correct?</p> <p>18 A. Correct. The 65 million and</p> <p>19 what stems from that is the same.</p> <p>20 Q. In order to maximize profits</p> <p>21 and, therefore be zippers for high-end</p> <p>22 outerwear, laminated zippers would have</p> <p>23 to be zippers that the high-end customers</p> <p>24 would purchase, correct, sir, yes or no?</p> <p>25 A. They would be purchasing</p> <p style="text-align: right;">Page 446</p>
<p>1 at all from before the jury's verdict or</p> <p>2 after the jury's verdict, your opinions?</p> <p>3 MR. DANIELS: Objection. The</p> <p>4 supplemental report speaks for itself.</p> <p>5 A. My 65 million doesn't change.</p> <p>6 I, obviously, explain why that is the</p> <p>7 case in my supplemental report. But my</p> <p>8 65 million --</p> <p>9 Q. I am not asking you to</p> <p>10 explain --</p> <p>11 MR. DANIELS: You have to let</p> <p>12 the witness answer the question. If</p> <p>13 you're going to ask a question, you</p> <p>14 have to let the witness answer it.</p> <p>15 MR. WOLKOFF: He's not answering</p> <p>16 the question.</p> <p>17 MR. DANIELS: Because you're</p> <p>18 interrupting him.</p> <p>19 MR. WOLKOFF: I am interrupting</p> <p>20 him because he's not answering.</p> <p>21 MR. DANIELS: At least you're</p> <p>22 admitting you're interrupting him.</p> <p>23 Can you, please, read back the</p> <p>24 question, Dawn.</p> <p>25 [The requested portion of the</p> <p style="text-align: right;">Page 445</p>	<p>1 zippers in this definition, yes. They</p> <p>2 would be purchasing high-end zippers. I</p> <p>3 am sorry, purchasing zippers for high-end</p> <p>4 goods.</p> <p>5 Q. Let me place in front of you DX</p> <p>6 639.</p> <p>7 (Defendants' 639, article from a</p> <p>8 publication called Gear Junkie dated</p> <p>9 January 14, 2014 previously marked for</p> <p>10 identification.)</p> <p>11 Q. You see that this is an article</p> <p>12 from a publication called Gear Junkie</p> <p>13 dated January 14th, 2014 that talks about</p> <p>14 the waterproof LightRail zipper shown in</p> <p>15 the Columbia jacket, sir?</p> <p>16 MR. DANIELS: Objection. Lack</p> <p>17 of authentication.</p> <p>18 A. I see this.</p> <p>19 Q. You read this in connection</p> <p>20 with your work in this matter, correct?</p> <p>21 A. I believe I saw information</p> <p>22 about IDEAL before, yes. Maybe it's</p> <p>23 black and white and I am not recognizing</p> <p>24 it. But I do recall pictures about</p> <p>25 IDEAL.</p> <p style="text-align: right;">Page 447</p>

<p>1 Q. You didn't discuss or even 2 mention the IDEAL zipper and the fact 3 that here it was shown in the Columbia 4 outerwear in your reports; did you, sir? 5 A. I didn't discuss this picture 6 in my report; no, I did not. 7 Q. I am not asking about the 8 picture. 9 Did you discuss the IDEAL 10 LightRail zipper at all as an alternative 11 zipper for purchase in any of your 12 reports? 13 MR. DANIELS: Objection as to 14 form. 15 A. I don't recall talking 16 specifically about IDEAL. I just talked 17 about alternatives. 18 Q. Let me place in front of you DX 19 664, which is also Plaintiffs' Deposition 20 173 in the Arntson deposition. 21 (Defendants' 664, document Bates 22 stamped YKK0011534, previously marked 23 for identification.) 24 Q. Do you see that this is YKK's 25 summary report of the Outdoor Retailer</p> <p style="text-align: right;">Page 448</p>	<p>1 that there weren't any acceptable 2 alternatives, whether or not they 3 infringe, right? 4 A. In my report, I have to go back 5 and look, I talk about how this was a 6 standard. And I am not aware of another 7 industry standard zipper, infringing or 8 otherwise. 9 Q. Is that something that you have 10 expertise on, sir? 11 A. No, I can't opine on 12 infringement or not. 13 Q. Mr. Cockrell, is he, to your 14 knowledge, an expert on what zippers 15 infringe patents or not? 16 A. No, I believe his focus is 17 industry. 18 Q. Did you talk to anybody else 19 other than Mr. Cockrell about whether or 20 not there were other non-infringing, 21 acceptable non-infringing alternative 22 zippers? 23 A. I don't recall any other 24 conversations about that, no. 25 Q. Directing your attention now</p> <p style="text-align: right;">Page 450</p>
<p>1 Show in August 2014, sir, so during the 2 relevant time period? 3 A. Yes, I do see that. 4 Q. Now, the prior exhibit that we 5 just looked at, Exhibit 639, Defendants' 6 Exhibit 639 showed the IDEAL zipper in a 7 Columbia outerwear garment, correct? 8 A. Yes, that's what it says. 9 Q. Did you search for other 10 examples of competitive zippers being 11 sewn into outerwear garments in 12 connection with your work in this case? 13 A. Yes, I did. 14 Q. And where are those? 15 A. Well, I talked with 16 Mr. Cockrell about that, and I discussed 17 in my report how there was no acceptable 18 alternatives. So I didn't find one. 19 Q. Again, sir, you keep going on 20 about this. What you said in your report 21 is that you were not aware of any 22 acceptable non-infringing alternatives, 23 correct? 24 A. Yes. 25 Q. You didn't say in your report</p> <p style="text-align: right;">Page 449</p>	<p>1 back to Defendants' Exhibit 664, you have 2 seen this report about the outdoor 3 retailer summer market in 2014, so during 4 the relevant time period in connection 5 with your work here, correct? 6 A. Correct. 7 Q. Let me direct your attention to 8 page 11553. You see there is a page here 9 that's entitled, "Homework On New Item 10 Development"? 11 A. I see that. 12 Q. And then about in the middle of 13 that page, there is a discussion of the 14 competitors in the water-repellent area, 15 correct? 16 A. Yes. 17 Q. And it says, "Competitors have 18 been aggressively developing new 19 design/function trends YKK is not being 20 able to cover," correct? 21 A. That's what it says. 22 Q. You saw that in connection with 23 your work in this matter, correct? 24 A. I did. 25 Q. But you said nothing about it</p> <p style="text-align: right;">Page 451</p>

<p>1 or even about competitors in your 2 reports; did you, sir?</p> <p>3 A. I didn't say anything about 4 this sentence. I've already talked about 5 my work in the market shares, and the 6 market sales and things like that.</p> <p>7 Q. You didn't say anything about 8 competitors in the industry; did you, 9 sir --</p> <p>10 MR. DANIELS: Objection as to 11 form.</p> <p>12 Q. -- in your reports?</p> <p>13 MR. DANIELS: Objection, asked 14 and answered.</p> <p>15 A. No. For example, I pointed out 16 in my supplemental report, I talk about 17 how they achieve the 500 million in sales 18 despite any competition.</p> <p>19 Q. I am not going you again about 20 the 500 million dollars in sales. You 21 keep repeating it over and over again. 22 But it's not an answer to my questions.</p> <p>23 MR. DANIELS: Objection.</p> <p>24 Q. My question is: Did you have 25 any kind of section or discussion in your</p> <p style="text-align: right;">Page 452</p>	<p>1 MR. WOLKOFF: I haven't even 2 asked my question about it yet.</p> <p>3 MR. DANIELS: You handed it to 4 him.</p> <p>5 MR. WOLKOFF: Yes, handing it, 6 handing an exhibit to a witness is not 7 asking a question about it.</p> <p>8 MR. DANIELS: I will reassert it 9 after you phrase a question then.</p> <p>10 Q. You see this is an e-mail chain 11 between Uretex and YKK attaching a 12 summary of a November 5, 2006 meeting 13 between them?</p> <p>14 MR. DANIELS: Objection. Lack 15 of authentication.</p> <p>16 A. I do see Defendants' Exhibit 17 278, yes.</p> <p>18 Q. And on page 335095?</p> <p>19 MR. DANIELS: Those are not the 20 right Bates numbers.</p> <p>21 A. It seems to be out of order. 22 It skips from 621 to 335.</p> <p>23 Q. Do you see on page 335095, 24 there is a few paragraphs under the 25 heading "Summary of Our Meeting of</p> <p style="text-align: right;">Page 454</p>
<p>1 narrative about competitors in the 2 water-resistant zipper industry during 3 the relevant time period?</p> <p>4 A. One example that comes to mind 5 is pointing out that YKK made those 6 sales, still 500 million, despite any 7 competition. So, yes, we are recognizing 8 there is a market. There is competitors 9 there.</p> <p>10 Q. Okay. Did you place into your 11 report any analysis of who the 12 competitors were in the industry for 13 water-resistant zippers during the time 14 period at issue?</p> <p>15 A. I did not list them and have 16 their sales data and things like that, as 17 I said earlier, no, I don't have that in 18 my report.</p> <p>19 Q. Here is yet another e-mail, 20 Defendants' Exhibit 278. 21 (Defendants' Exhibit 278, 22 document Bates stamped YKK0484616, 23 previously marked for identification.)</p> <p>24 MR. DANIELS: Objection, lack of 25 authentication.</p> <p style="text-align: right;">Page 453</p>	<p>1 November 5"?</p> <p>2 A. Yes.</p> <p>3 Q. And you see there is a section 4 numbered 3, "Changes in Market 5 Operations" in which Mr. Sarumaru was 6 speaking?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see, starting in the 9 third line, he told Stuart Press of 10 Uretex that "This is also true for 11 water-repellent zippers, and there is 12 also a disturbing increase of similar 13 products with cheaper pricing by other 14 companies"?</p> <p>15 A. I see that sentence.</p> <p>16 Q. Did you say anything about this 17 in your report?</p> <p>18 A. I don't talk about this 19 paragraph in my report.</p> <p>20 Q. But do you talk about the 21 subject, sir? You know that's what I am 22 asking you.</p> <p>23 MR. DANIELS: Objection. That's 24 not the question you asked. You asked 25 him if he talked about this in his</p> <p style="text-align: right;">Page 455</p>

<p>1 report. And you were referring to 2 what you just read, and he answered 3 the question. 4 If you would like to ask him a 5 different question, feel free. But 6 don't accuse him of that, having to 7 guess what the question -- 8 MR. WOLKOFF: That will be the 9 day when you teach me how to ask 10 questions, Mr. Daniels. That's a day 11 long in coming. 12 The this referred to the subject 13 matter, obviously. He knows it and 14 you do too. 15 MR. DANIELS: And I object. 16 He's going to take you at your words. 17 MR. WOLKOFF: Those weren't my 18 words. 19 Q. Did you talk at all in your 20 report about this subject matter, that is 21 an increase of similar products with 22 cheaper pricing by other zipper 23 manufacturing companies -- zipper 24 laminating companies, that is? 25 A. Not in this detail. I talked</p> <p style="text-align: right;">Page 456</p>	<p>1 companies? 2 MR. DANIELS: Objection. Asked 3 and answered. 4 A. I did not elaborate in detail 5 about the competition. There is many 6 forms and I didn't talk about it, but I 7 recognize it was there. 8 Q. You had this exhibit before you 9 or in connection with writing your 10 supplemental report, correct? 11 A. I did have this, yes. 12 Q. Did you cite it in your report, 13 in the discussions in your report, 14 anyway? 15 A. I don't believe so. 16 Q. Did you cite in your report 17 even one of the documents that I have 18 shown you today at your deposition, even 19 one? 20 MR. DANIELS: Objection. The 21 reports speak for themselves. 22 A. Yeah, I believe I cited the 23 Outdoor Retailer reports in my report. I 24 don't know if I cited that one. I tried 25 to get every year. I would need to go</p> <p style="text-align: right;">Page 458</p>
<p>1 about alternatives, non-infringing 2 alternatives, and I talked about being 3 able to make these sales despite the 4 market's competition. 5 Q. But did you say anything in 6 your report about this topic, that is as 7 Mr. Sarumaru said, as far back as 2006, 8 that there was an increase of similar 9 products with cheaper prices by 10 competitors in the water-resistant 11 laminating zipper industry? 12 MR. DANIELS: Objection. Asked 13 and answered. 14 A. Aside from my discussion of 15 alternatives and my discussion of being 16 able to achieve the global market sales 17 despite competition. I did not go into 18 detail about that competition. 19 Q. Whether you went into detail or 20 not, did you have anything in your 21 narrative about what Mr. Saramaru was 22 talking about with Mr. Press as far back 23 as 2006 that there had been a disturbing 24 increase of similar products with cheaper 25 pricing by other zipper laminating</p> <p style="text-align: right;">Page 457</p>	<p>1 back and look. 2 Q. All you cited about the Outdoor 3 Retailer reports is that you said 4 customers went to them, correct? 5 A. My report says what it says, 6 but customers went to them and sometimes 7 they show what YKK was doing there. 8 Q. Urettek representatives went to 9 each one of those trade shows as well, 10 correct? 11 A. I do recall Mr. Press being at 12 those trade shows. Yes. I don't know if 13 he went to all of them. 14 Q. And are there any documents 15 that suggest or state that Mr. Press went 16 to all of the trade shows? 17 A. I don't know of a document that 18 inventories what trade shows he went to. 19 Q. You say that at the trade 20 shows, the customers who went to the YKK 21 booth would have seen their market 22 flyers, correct? 23 A. I identified that they were 24 likely exposed to flyers, yes. 25 Q. So you would agree that</p> <p style="text-align: right;">Page 459</p>

<p>1 Mr. Press who also went to the trade 2 shows also likely saw the YKK flyers, 3 correct? 4 A. Again, I assume he was there on 5 some of the occasions, yes. 6 Q. Do you know of Mr. Press 7 raising any objection to anyone at YKK or 8 anybody else, to your knowledge, about 9 what was in the YKK marketing flyers at 10 any point? 11 A. I don't know one way or the 12 other. I know Mr. Press raised many 13 concerns. I don't know if this was one 14 of them. 15 Q. Do you know if Mr. Press ever 16 objected to any of the marketing flyers 17 that were at the YKK trade shows that he 18 went to? 19 A. I don't know one way or the 20 other. There were many discussions 21 between the parties. 22 Q. You can't know one way or the 23 other. You need to know. Either yes or 24 no. There is no such thing as not 25 knowing one way or the other. That</p> <p style="text-align: right;">Page 460</p>	<p>1 A. I'm sorry, that is something I 2 have already? 3 Q. That is something you have 4 already. 5 Do you have it in front of you, 6 sir? 7 A. I do not. I am looking for it. 8 Q. Rather than taking the time, 9 let me place it in front of you. 10 A. Thank you. 11 Q. You see that this an e-mail 12 report by Mr. Blunt concerning Stuart 13 Press, back on June 2, 2010? 14 A. Yes. 15 Q. And you see in that report it 16 says, "Press attends the fall outdoor 17 show every year"? 18 A. I see that's Mr. Blunt's 19 statement, yes. 20 Q. And that's where you say YKK 21 had its marketing flyers, at the trade 22 shows that Mr. Press was attending? 23 A. That is one place they have 24 them, yes. 25 Q. I would like to place them in</p> <p style="text-align: right;">Page 462</p>
<p>1 applies to not remembering. But not 2 knowing doesn't have a caveat of one way 3 or the other. You either know or you 4 don't know. 5 Do you know of Mr. Press or to 6 your knowledge anybody else at Uretek 7 ever raising any objection about any of 8 the contents of the YKK marketing flyers 9 at anytime? 10 A. To my knowledge, I don't recall 11 that as I sit here, him doing it or not 12 doing it, and I am not privy to those 13 negotiations that were going on, so I 14 don't know. 15 Q. Did you see any documents or 16 any notes or anything else, or any 17 information, data, reflecting an 18 objection by Mr. Press or anybody else at 19 Uretek to anything in the YKK marketing 20 flyers; do you recollect seeing any of 21 that? 22 A. I don't recall that as I sit 23 here. I know claims were brought. 24 Again, I -- 25 Q. Can you pull out 509, please?</p> <p style="text-align: right;">Page 461</p>	<p>1 front of you. Defendants' Exhibit 295. 2 (Defendants' Exhibit 295, 3 document Bates stamped YKK0627414 4 previously marked for identification.) 5 Q. You see this is a report of a 6 YKK meeting with Uretek in March of 2007, 7 sir? 8 A. Yes. 9 MR. DANIELS: Objection. Lack 10 of authentication. 11 Q. You saw this document in 12 connection with the preparation of your 13 supplemental report in this matter, 14 correct? 15 A. I am reviewing it to confirm. 16 (Witness reviews document.) 17 A. Yes, I did see this. 18 Q. And you see this is a 19 PowerPoint that YKK presented to Uretek 20 at this meeting in March of 2007, 21 correct? 22 MR. DANIELS: Objection as to 23 form. 24 A. I see it's probably a 25 PowerPoint. I don't know who presented</p> <p style="text-align: right;">Page 463</p>

<p>1 which. 2 Q. Well, it was Uretek and YKK, 3 according to the PowerPoint who was 4 present at the meeting, right? 5 A. That's what this says, yes. 6 Q. You had this document in 7 connection with doing your work in this 8 matter, correct? 9 A. I did. 10 Q. Did you ask anyone what this 11 document was? 12 A. I don't know. I know we talked 13 about some of the topics that are in here 14 with Mr. Press, but I don't know if I was 15 using this document to do it. 16 Q. Let me direct your attention to 17 page 627430. You see this part of the 18 PowerPoint that is dated March 2, 2007 in 19 the right-hand corner at the top? 20 A. Yes. 21 Q. And this section of the 22 PowerPoint is headed "Competitors," 23 correct? 24 A. It is. 25 Q. And in the middle there is a</p> <p style="text-align: right;">Page 464</p>	<p>1 as I have said this morning. 2 Q. How much longer? 3 MR. DANIELS: Objection. Asked 4 and answered. 5 A. I don't know precisely how much 6 longer. I know I see references to 7 weeks. 8 Q. Seven days is, obviously, one 9 week for the Chinese manufacturers to 10 deliver their water-resistant zippers, 11 correct? 12 A. Yes. 13 Q. Remember, we looked at a 14 document that indicated that typical lead 15 time for the delivery of Uretek laminated 16 T4s and T5s was six to eight weeks? 17 A. I do recall. That was one of 18 the examples I was thinking of. 19 Q. So that would be as much as 20 eight times as long to get a Uretek 21 laminated zipper than a Chinese 22 manufactured water-resistant zipper, 23 correct? 24 A. Compared with what actually 25 happened. Yes, at the time given the low</p> <p style="text-align: right;">Page 466</p>
<p>1 picture of what is said to be a 2 water-resistant zipper, like the T4s, 3 T5s, and the T8s, 9s and 10s, correct? 4 A. That's what it says here, 5 "water-resistant zipper." 6 Q. And right above the 7 water-resistant zipper, it talks about 8 Chinese manufacturers, right? 9 A. It does say that. 10 Q. And it says among other things 11 that these Chinese manufacturers, the 12 competitors for the sale of 13 water-resistant zippers, had a lead time 14 of only seven days, correct? 15 A. That's what this says. 16 Q. How did Uretek laminated T4s 17 and T5s compare in connection with the 18 sales of those zippers to Asian garment 19 manufacturers with this lead time for the 20 Chinese manufacturers of seven days; do 21 you know? 22 A. Historically I understood it to 23 be longer. 24 Q. How much longer? 25 A. I have seen various estimates,</p> <p style="text-align: right;">Page 465</p>	<p>1 volumes, no inventory control, yes. 2 Q. Do you know the importance of 3 lead times in the garment fashion 4 industry? 5 A. I understand that they can be 6 important, but I am not an industry 7 expert on that. 8 Q. You said nothing about this 9 document in your report; did you? 10 A. I don't believe I cited it for 11 anything. It has a lot of basic 12 background information. 13 Q. In fact, you said nothing about 14 Chinese competitors in your reports. You 15 don't have the words "Chinese 16 competitors" appear anywhere; do you, 17 sir? 18 MR. DANIELS: Objection as to 19 form. 20 A. I don't believe so. It just 21 says "Competitors." 22 Q. Are you aware that Uretek never 23 had a patent in China for its lamination? 24 A. China, correct. I just wanted 25 to be correct, Taiwan and Hong Kong, yes,</p> <p style="text-align: right;">Page 467</p>

<p>1 but China no.</p> <p>2 Q. Actually, plaintiffs never had</p> <p>3 a patent in Taiwan; did they, sir?</p> <p>4 MR. DANIELS: Objection as to</p> <p>5 form.</p> <p>6 A. I understood the zipper patents</p> <p>7 include foreign counterparts in Canada,</p> <p>8 Taiwan, Hong Kong, Japan and the European</p> <p>9 Union.</p> <p>10 MR. WOLKOFF: I would like to</p> <p>11 have a memorandum opinion and order by</p> <p>12 Judge Woods in this matter filed on</p> <p>13 March 23, 2023 marked as Donohue</p> <p>14 Exhibit 14 for identification.</p> <p>15 (Donohue Exhibit 14, Memorandum</p> <p>16 Opinion and Order by Judge Woods was</p> <p>17 so marked for identification, as of</p> <p>18 this date.)</p> <p>19 Q. Have you seen this memorandum,</p> <p>20 opinion and order by Judge Woods in this</p> <p>21 matter prior to today?</p> <p>22 A. I have.</p> <p>23 Q. Did you read it?</p> <p>24 A. I opened it and skimmed some</p> <p>25 parts of it.</p> <p style="text-align: right;">Page 468</p>	<p>1 A. Yes. I think that's what he's</p> <p>2 using, the name change.</p> <p>3 Q. So you now are aware that the</p> <p>4 plaintiffs did not have a patent in</p> <p>5 Taiwan?</p> <p>6 MR. DANIELS: Objection.</p> <p>7 Mischaracterizes the order.</p> <p>8 Mischaracterizes the facts.</p> <p>9 A. I am aware of the order, but</p> <p>10 again as a damage expert I am assuming</p> <p>11 infringement. I am assuming standing. I</p> <p>12 am not addressing any legal issues that</p> <p>13 may come with the patent.</p> <p>14 Q. With regard to China, given</p> <p>15 that as you've agreed Uretek never had a</p> <p>16 patent with regard to its lamination in</p> <p>17 China, a customer could have purchased</p> <p>18 water-resistant zippers from a Chinese</p> <p>19 supplier overseas without violating any</p> <p>20 Uretek patent, correct?</p> <p>21 MR. DANIELS: Objection as to</p> <p>22 form.</p> <p>23 A. Well, it depends on what they</p> <p>24 would do with that afterwards. If they</p> <p>25 imported it to the U.S., maybe. But as</p> <p style="text-align: right;">Page 470</p>
<p>1 Q. So let me direct your attention</p> <p>2 to page 12 of Judge Woods' order.</p> <p>3 Do you see in the second full</p> <p>4 paragraph there, he talks about whether</p> <p>5 or not the plaintiffs had a patent in</p> <p>6 Taiwan?</p> <p>7 A. Page 12 you said, right?</p> <p>8 Q. Yes.</p> <p>9 A. Second paragraph?</p> <p>10 Q. Yes, sir.</p> <p>11 A. Yes, I see that.</p> <p>12 Q. Do you see the Court said in</p> <p>13 that second paragraph about Taiwan, "The</p> <p>14 records uncovered in Taiwan show no</p> <p>15 change in ownership of the Taiwanese</p> <p>16 patents from Mr. Press and Howard Koder.</p> <p>17 More importantly there is no indication</p> <p>18 in the records that a transfer was ever</p> <p>19 implemented to either Uretek or</p> <p>20 Trelleborg"?</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Uretek, Trelleborg, those are</p> <p>24 the plaintiffs in this case, referring to</p> <p>25 Uretek being AU New Haven, correct?</p> <p style="text-align: right;">Page 469</p>	<p>1 part of a make part, correct, if there is</p> <p>2 no patent in China, you would not be</p> <p>3 infringing the make part of that or the</p> <p>4 use.</p> <p>5 Q. And so the Chinese competition,</p> <p>6 they would not be infringing on any</p> <p>7 Uretek patent if the purchaser of their</p> <p>8 zippers didn't import them into the</p> <p>9 United States, correct?</p> <p>10 MR. DANIELS: Objection. Calls</p> <p>11 for a legal conclusion.</p> <p>12 A. Well, they have other patents</p> <p>13 around the world. So that could be</p> <p>14 infringing.</p> <p>15 Q. Okay. Where did Uretek have</p> <p>16 other patents?</p> <p>17 A. Well, we just mentioned the</p> <p>18 foreign counterparts included Taiwan,</p> <p>19 Japan, Hong Kong and the European Union,</p> <p>20 for example.</p> <p>21 Q. Well, I mentioned Taiwan in the</p> <p>22 context of not having a patent there.</p> <p>23 MR. DANIELS: Objection, again</p> <p>24 misstates the record.</p> <p>25 Q. You would agree a customer</p> <p style="text-align: right;">Page 471</p>

<p>1 could have purchased water-resistant 2 zippers from a supplier in China, so long 3 as it didn't ship those zippers into the 4 United States or one of the locations 5 where YKK -- strike that. 6 You agree that a customer could 7 have purchased water-resistant zippers 8 from a supplier in China, so long as it 9 didn't ship those zippers into the United 10 States or one of the other countries 11 where Uretek did have a patent on its 12 lamination activities, correct? 13 A. I obviously can't give legal 14 opinions, but I agree if there is no 15 patent coverage that you would be 16 infringing, it could be a non-infringing 17 activity. 18 Q. Did you do anything to look at 19 how many competitors for water-resistant 20 zippers were located in China during the 21 time period at issue? 22 A. Aside from understanding that 23 the outerwear sales and the billion 24 dollars of sales that were made were made 25 with that competition.</p> <p style="text-align: right;">Page 472</p>	<p>1 legal conclusion. I am not 2 instructing the witness not to answer. 3 So I am not sure why we are engaging 4 in the colloquy. 5 MR. WOLKOFF: I actually read 6 the portion of the order about Taiwan 7 to the witness, so I didn't 8 mischaracterize. 9 MR. DANIELS: Well, we disagree. 10 The witness can answer the question. 11 A. I understand that the Japanese 12 patent was filed sometime prior to 2009, 13 I believe, or around 2009. And I think 14 it issued in 2013. 15 Q. Can you turn to Judge Woods 16 order, Donohue Exhibit 14, back to page 17 12? 18 Do you see there the first 19 paragraph above the one about Taiwan is 20 about Japan, correct? 21 A. Yes. 22 Q. And Judge Woods says in the 23 next to last sentence going on to the 24 final sentence of that paragraph, that 25 "There was no transfer of the rights in</p> <p style="text-align: right;">Page 474</p>
<p>1 Q. Okay. I am not moving to 2 strike because we've agreed to forego 3 making those motions until time of trial. 4 But I would have made many of them. 5 Did you do anything to 6 determine how many competitors for 7 water-resistant zippers were in China 8 during the period at issue, that calls 9 for a number of competitors, if any? 10 A. I saw Chinese competitors 11 mentioned in the documents, but I have 12 not inventoried them and added them up. 13 No, I do not provide a number of 14 competitors in my report. 15 Q. Do you know when the plaintiffs 16 had a patent for their lamination 17 activities in Japan, as of when? 18 MR. DANIELS: Objection. Calls 19 for a legal conclusion. 20 MR. WOLKOFF: No, it doesn't. 21 It just calls for having read Judge 22 Woods' opinion which he said he did. 23 MR. DANIELS: You've already 24 mischaracterized that opinion once. 25 So I am objecting. It calls for a</p> <p style="text-align: right;">Page 473</p>	<p>1 the '523 patent to Uretek or Trelleborg, 2 until the purported 2016 assignment was 3 registered with the JPO," Japanese Patent 4 Office? 5 A. I see that. 6 Q. So are you aware that the 7 plaintiffs did not have a Japanese patent 8 for the lamination activities until the 9 latter part of 2016 -- 10 MR. DANIELS: Objection. Calls 11 for a legal conclusion. 12 Q. -- not 2013, as you just 13 testified to? 14 MR. DANIELS: Objection. Calls 15 for legal conclusions. 16 A. Well, just to be clear, I 17 thought that '13 may have been the file 18 date. But the '16 -- I don't recall the 19 assignment date. 20 Q. You said the file date was 21 2009. 22 A. The file date was pre-2009, I 23 don't remember the exact year. And I 24 thought there -- 25 Q. So now you're saying you</p> <p style="text-align: right;">Page 475</p>

<p>1 thought 2013 was also the file date, two 2 file dates, that's how you're going to 3 answer my question? 4 A. Issue, issued. 5 MR. DANIELS: Objection. You 6 have to stop badgering the witness. 7 He answered the question very clearly. 8 You keep going over the same 9 questions. Let him finish his answer 10 to your questions. 11 A. I thought '13 was the issue 12 date. Not the file date. I did not -- 13 the 2016 assignment, I don't know. I 14 know that's a legal issue that's being 15 discussed. 16 Q. Okay. Actually, on page 9 of 17 the judge's order he states under the 18 paragraph F that the patent wasn't filed 19 for in Japan until September 2016, 20 correct? 21 A. I see him saying that shows 22 that the September 16th was the executed 23 deed of assignment. 24 Q. So a patent couldn't have been 25 filed for by the plaintiffs until they</p> <p style="text-align: right;">Page 476</p>	<p>1 A. At a high level, if the 2 infringement period is shorter, it may 3 take certain units out of the damage 4 calculation if there is no infringement 5 during that period. Because I am 6 assuming infringement. 7 Q. So sitting here, do you know 8 what the impact on your damages opinions 9 would have been if plaintiffs didn't have 10 a patent in Japan until the fall of 2016? 11 MR. DANIELS: Objection as to 12 form. Also calls for legal 13 conclusions. 14 A. If time is the proper way to 15 address that, assuming, because I can't 16 address these legal issues, but time is 17 the proper way to address that, my report 18 and the exhibits have damages by year, so 19 you would adjust the years accordingly, 20 if that, that was the solution to this 21 legal issue. 22 Q. Do you have a damages analysis 23 beginning in November or September of 24 2016? 25 A. My analysis is by year.</p> <p style="text-align: right;">Page 478</p>
<p>1 actually had the patent assigned to them, 2 which was by September of 2016, correct? 3 MR. DANIELS: Objection as to 4 form. Calls for a legal conclusion. 5 A. Yeah, I can see the dates, but 6 I've assumed that there are patents. 7 I've assumed they are infringed. I am 8 not touching on these legal issues. 9 Q. Your work assumed that the 10 plaintiffs did have a patent in Japan and 11 Taiwan from 2009 forward, correct? 12 A. It assumed that they had, that 13 there was an infringement and they had 14 standing for damages for that damage 15 period, that the legal issues that were 16 needed -- 17 Q. Is the answer yes? 18 A. Yes, I've assumed that that 19 would be the legal period. 20 Q. If plaintiffs didn't have a 21 patent in Japan until the fall of 2016, 22 what, if anything, would that do to your 23 damages opinions; do you know? 24 MR. DANIELS: Objection as to 25 form.</p> <p style="text-align: right;">Page 477</p>	<p>1 Q. So you don't have one beginning 2 in November or September of 2016? 3 MR. DANIELS: Objection. 4 You have to let him finish his 5 answers. 6 MR. WOLKOFF: He finished. 7 MR. DANIELS: How do you know, 8 you interrupted him. 9 MR. WOLKOFF: I didn't interrupt 10 him. 11 A. I have it by year. I currently 12 do not have a subtotal for '16 through 13 2019 or 2018; that's fair. But I do have 14 my damages calculation by year. 15 Q. But you didn't set forth in 16 your reports a damages opinion on the 17 basis of the plaintiffs not having a 18 patent in Japan until the fall of 2016; 19 did you? 20 MR. DANIELS: Objection as to 21 form. 22 A. If time is the right way to 23 solve that, I haven't created a new 24 subtotal, but I have the damages by year. 25 Q. If the plaintiffs didn't have a</p> <p style="text-align: right;">Page 479</p>

<p>1 patent in Taiwan, what would that do to 2 your damages figures -- 3 MR. DANIELS: Objection as to 4 form. 5 Q. -- do you know? 6 MR. DANIELS: Objection. Calls 7 for a legal conclusion. 8 A. If they don't have a patent in 9 Taiwan, the U.S. damages would still be 10 based on import. But if there is no 11 patent in Taiwan, and you're asking me to 12 assume that those are not infringing, 13 effectively, they would remove the ones 14 that are in Taiwan, made in Taiwan. 15 Q. Can you tell me what the impact 16 would be on your damages opinion? 17 A. I would have to look at my 18 exhibits and remove RCPU, which is made 19 in Japan, Taiwan, for example, from those 20 calculations. 21 Q. There were other sales of T8s, 22 9s and 10s in Taiwan beyond RCPU, 23 correct? 24 A. I believe T8s, 9s and 10s were 25 made in Japan.</p> <p style="text-align: right;">Page 480</p>	<p>1 advertising claim. 2 Q. Did you separate out your 3 purported damages with respect to either 4 of those claims? 5 In other words, this amount of 6 damages applies to the patent 7 infringement claim, and this amount of 8 damages applies to the Lanham Act claim? 9 A. I separated them by the act of 10 selling into the excluded markets, which 11 I understand could be a wrongful act 12 under potentially the patent claim in the 13 United States or potentially the Lanham 14 Act claim. 15 Q. That's not what I am asking. 16 MR. DANIELS: Again, objection, 17 he answered your question. If you 18 would like to change your question and 19 ask him a different question, you're 20 free to. You have to stop 21 mischaracterizing his answers as 22 non-responsive to your questions. 23 Q. Did you separate out your 24 damages opinions with respect to the 25 Lanham Act and patent infringement.</p> <p style="text-align: right;">Page 482</p>
<p>1 Q. But the question is whether 2 they were sold, isn't it, sir, not where 3 they were manufactured? 4 A. There were some T8s, 9s and 10s 5 sold in Taiwan. I would have to look at 6 that as well. 7 Q. Do you know sitting here today 8 what the impact would be on your damages 9 opinion if the plaintiffs did not have a 10 patent in Taiwan? 11 MR. DANIELS: Objection as to 12 form and objection that it calls for 13 legal conclusions. 14 A. Depending on the wrongful act 15 or claim, we would have to adjust that 16 time period, and I haven't provided a 17 subtotal at this time. 18 Q. Are you aware of how many 19 remaining different claims there are in 20 the plaintiffs' operative complaint in 21 this case? 22 A. I believe I am. 23 Q. How many are there? 24 A. I believe there is a U.S. 25 patent claim and a Lanham Act, a false</p> <p style="text-align: right;">Page 481</p>	<p>1 MR. DANIELS: Objection. 2 Thought you were done. 3 MR. WOLKOFF: Let me start 4 again. 5 Q. Did you separate out your 6 opinions on damages and allocate them to 7 the two different claims here, saying 8 this is the amount of damages in my 9 opinion under the Lanham Act claim, and 10 this is the amount of damages in my 11 opinion under the patent infringement 12 claim? 13 A. I broke them out by act. I was 14 requested to break them out by act. 15 Q. Did you break out your damages 16 opinions by claim in this matter, this 17 much according to or with respect to 18 patent infringement and this much with 19 respect to the Lanham Act? 20 A. By breaking them out by act, I 21 understand that they would fall either in 22 the patent claim for the lost profits in 23 the United States or under the false ad 24 claims. 25 Q. Did you say in your report</p> <p style="text-align: right;">Page 483</p>

<p>1 anywhere these are the damages that I 2 opined for patent infringement and these 3 are the damages that I opined under the 4 Lanham Act?</p> <p>5 A. I don't phrase it that way. I 6 phrased it as these are the lost profit 7 damages due to the lost profit activity 8 and these are the disgorgement damages 9 which I understand then relate to those 10 claims because different acts relate to 11 the wrongful act of selling into excluded 12 markets.</p> <p>13 Q. Do you know how many different 14 named defendants there are in this case, 15 different corporations?</p> <p>16 A. I don't have a count for you, 17 but I appreciate there are selling 18 affiliates all over the world. A dozen 19 plus.</p> <p>20 Q. You call them affiliates. Did 21 you look up the relationship among any of 22 these defendants?</p> <p>23 A. Only what's shown in the record 24 that they are sales affiliates for YKK.</p> <p>25 Q. They are separate corporations,</p> <p style="text-align: right;">Page 484</p>	<p>1 and damages by entity.</p> <p>2 Q. How much, in your opinion, were 3 the damages caused under the Lanham Act 4 by YKK Zipper Indonesia; is that in your 5 report?</p> <p>6 MR. DANIELS: Objection as to 7 form. Objection, it calls for a legal 8 conclusion.</p> <p>9 A. I would need to look at my 10 exhibits to my report where I believe I 11 lay out the sales by entity. So there is 12 a line for Indonesian and it would have 13 revenues and gross profits for 14 disgorgement and then there would be a 15 lost profits, too, where I break it out 16 by entity.</p> <p>17 Q. Did you state in your opinions 18 as opposed to having to go look in 19 tables, how much your damages opinion is 20 with regard to any one of these separate 21 YKK entities?</p> <p>22 MR. DANIELS: Objection as to 23 form.</p> <p>24 A. No. I believe my report, the 25 narrative, as we've been saying,</p> <p style="text-align: right;">Page 486</p>
<p>1 aren't they, sir, the defendants? Each 2 one is a separate corporation?</p> <p>3 A. I do understand that, yes. 4 That's why they are listed here.</p> <p>5 MR. WOLKOFF: Let me have the 6 amended complaint, please, marked as 7 Donohue Exhibit 15, please, for 8 identification. 9 (Donohue Exhibit 15, amended 10 complaint was so marked for 11 identification, as of this date.)</p> <p>12 MR. DANIELS: What is that?</p> <p>13 Q. Do you see that there are 21 14 separate corporations who are defendants 15 in this case?</p> <p>16 A. I can count them for you, but I 17 recognize there are a list of defendants 18 here, yes.</p> <p>19 Q. You didn't opine as to a 20 damages number with respect to YKK 21 Corporation versus YKK Hong Kong versus 22 YKK fastening product sales and so on, 23 that is as to each separate defendant 24 corporation; did you, sir?</p> <p>25 A. My report breaks down the sales</p> <p style="text-align: right;">Page 485</p>	<p>1 aggregates that for all of the YKK 2 entities together. And then the exhibits 3 to my report break it out by entity.</p> <p>4 Q. Can I read in the narrative in 5 your report any statement to the effect 6 of these are the damages under the Lanham 7 Act as regards YKK France, SARL, these 8 are for YKK Vietnam Co., and so on and so 9 forth, is that anywhere in your report in 10 the narrative?</p> <p>11 A. You would have to look at the 12 exhibits to get the disgorgement number 13 and the profit number.</p> <p>14 Q. And that's true for the Lanham 15 Act and it's also true for the patent 16 infringement claims, right?</p> <p>17 A. Correct. That detail is in the 18 exhibits. Not in the narrative itself.</p> <p>19 Q. Let's take a look at Exhibit 20 R34 in your supplemental report, please.</p> <p>21 A. Exhibit 34, right?</p> <p>22 Q. Yes. Exhibit 34 and Exhibit 23 34A you compare revenues and profits 24 between what the parties earned based on 25 YKK selling T8s, 9s and 10s versus what</p> <p style="text-align: right;">Page 487</p>

<p>1 the parties would have been earned if YKK 2 had been able to sell T4s and T5s to 3 their customers instead, correct? 4 A. Yes, there is a lot here. But 5 that's essentially what this is doing, 6 it's comparing what actually happened 7 them selling T8s, 9s and 10s for the 8 high-end outerwear compared to what 9 should have happened, them selling T4s 10 and 5s for the high-end outerwear. 11 Q. Looking at the line item for 12 high-end outerwear, you got the 13 determination of what was high-end 14 outerwear from Cockrell, right? 15 A. He was one of the steps, yes. 16 He was the last step that narrowed it to 17 that. 18 Q. And now in Exhibits 34 and 34A, 19 you're reallocating the parties' profits 20 based on Cockrell's determination of 21 high-end outerwear, correct? 22 A. In part, yes. That is the 65 23 million in part comes from Mr. Cockrell. 24 Q. And this is your profit 25 analysis under the jury's verdict,</p> <p style="text-align: right;">Page 488</p>	<p>1 MR. DANIELS: Objection. 2 Q. Whether you got it from him 3 orally or in writing, I am not asking you 4 that, but you got it from him, right? 5 A. He was part of that 65 million. 6 And he was part of it before, and he was 7 part of it after the jury verdict. And I 8 discussed with him that his verdict -- 9 his opinion was consistent with the jury 10 verdict. 11 Q. Your analysis of profits came 12 after Cockrell had already determined 13 what was high-end outerwear, correct? 14 A. Well, my first report came 15 before the jury verdict, yes. Maybe I 16 misunderstood. 17 Q. Yeah. Exhibits 34 and 34A are 18 your reallocation of profits among the 19 parties, correct? 20 A. They are my -- in my 21 supplemental report, to look at the 22 profits between the parties, yes. 23 Q. Okay. And your analysis of 24 profits came after Mr. Cockrell already 25 determined and told you what, in his</p> <p style="text-align: right;">Page 490</p>
<p>1 correct? 2 A. This is. This is a 3 demonstration of that, what it looks like 4 now, sitting here today. 5 Q. And you got the line item for 6 high-end outerwear from Mr. Cockrell, 7 right? 8 MR. DANIELS: Objection. Asked 9 and answered. 10 A. Well, he's part of that 11 process, yes. 12 Q. And you got that line item from 13 Mr. Cockrell before you made your 14 profitability analysis, correct? 15 A. I got that, that same number 16 happened to be the same, but I talked 17 with Mr. Cockrell about his analysis and 18 confirmed that it was consistent with the 19 jury verdict. 20 Q. You got Mr. Cockrell's line 21 item for high-end outerwear before you 22 made your profitability analysis? 23 MR. DANIELS: Objection. 24 Q. Here in Exhibits 34 and 34A, 25 correct?</p> <p style="text-align: right;">Page 489</p>	<p>1 opinion, was high-end outerwear, correct? 2 MR. DANIELS: Objection. Asked 3 and answered. 4 A. Well, it was done after the 5 fact, of course, because it was done now, 6 after these sales had occurred. So, yes, 7 it happened later. 8 Q. Cockrell didn't analyze 9 profitability before determining, for 10 example, that Berghaus's outerwear 11 garment called the Mirage Shell was 12 high-end outerwear; did he? 13 MR. DANIELS: Objection as to 14 form. 15 A. You would have to ask 16 Mr. Cockrell exactly what he did before. 17 But I also understood that Mr. Cockrell, 18 like I, was aware of the dynamic of this 19 definition which is 3 cents for a royalty 20 were permitted for lamination profits, 21 and he was aware of that, as was I, 22 before. So I think he was aware of that 23 and considered it before, as did I. 24 Q. I am asking you whether after 25 the jury's verdict you understand that</p> <p style="text-align: right;">Page 491</p>

<p>1 Cockrell kept his same opinion of what 2 was high-end outerwear as before the 3 jury's verdict, 65 million meters, 4 correct?</p> <p>5 MR. DANIELS: Objection as to 6 form.</p> <p>7 A. Ultimately, his opinion was the 8 same with my calculations. I should add 9 we're using 65 million as a shorthand, 10 but you appreciate that Mr. Cockrell 11 looks at the features and I work with him 12 to incorporate the sales data.</p> <p>13 Q. Mr. Cockrell's opinion of what 14 was high-end outerwear and what was not 15 high-end outerwear remained the same 16 after the jury's verdict, correct?</p> <p>17 MR. DANIELS: Objection as to 18 form.</p> <p>19 A. Correct. He reviewed his 20 opinion in light of that, but, yes, the 21 finding of which item is high-end 22 outerwear remained the same.</p> <p>23 Q. Do you know whether 24 Mr. Cockrell analyzed profitability 25 before determining, for example, that</p> <p style="text-align: right;">Page 492</p>	<p>1 MR. DANIELS: You are clearly, 2 clearly interrupting the witness's 3 answer.</p> <p>4 Q. Did you have anything else to 5 answer?</p> <p>6 MR. DANIELS: You are clearly 7 interrupting the witness's answer.</p> <p>8 THE WITNESS: I don't have 9 anything further.</p> <p>10 A. How long have we been going 11 since lunch?</p> <p>12 Q. An hour and five minutes.</p> <p>13 A. Can we take a break? I think 14 we need a break. Would you like to 15 finish your question, though?</p> <p>16 Q. I would.</p> <p>17 A. Absolutely.</p> <p>18 Q. Do you know whether or not, in 19 particular, Mr. Cockrell made an analysis 20 of maximizing profitability before 21 determining that specifically the 22 Berghaus Mirage Shell was a high-end 23 outerwear shell?</p> <p>24 A. Again, for details about what 25 he did, you would have to ask</p> <p style="text-align: right;">Page 494</p>
<p>1 Berghaus's outerwear garment called the 2 Mirage Shell was high-end outerwear?</p> <p>3 A. I believe I mentioned, you have 4 to ask him what he did, but I know he was 5 aware of the profitability between the 6 parties given the 3 cents and the 7 lamination profits.</p> <p>8 Q. I am not asking about 9 profitability --</p> <p>10 MR. DANIELS: You have to let 11 him finish his answer.</p> <p>12 MR. WOLKOFF: He did finish.</p> <p>13 MR. DANIELS: He finished 14 because you interrupted him again.</p> <p>15 MR. WOLKOFF: You stop yelling 16 at me.</p> <p>17 MR. DANIELS: Stop interrupting 18 the witness because you don't like his 19 answer.</p> <p>20 MR. WOLKOFF: Stop raising your 21 voice at me.</p> <p>22 MR. DANIELS: Then stop 23 interrupting the witness.</p> <p>24 MR. WOLKOFF: I am not 25 interrupting.</p> <p style="text-align: right;">Page 493</p>	<p>1 Mr. Cockrell. But I also appreciate that 2 with the analysis as a whole, not 3 narrowed to any one good or item you're 4 selecting, he did appreciate that the way 5 the license worked would provide 3 cents 6 or lamination profits, depending on this 7 definition. So he was aware of the 8 profit portion of this process at the 9 time.</p> <p>10 Q. Okay. That's not what I am 11 asking you. Do you know whether or not 12 Mr. Cockrell made any analysis with 13 regard to maximizing profitability with 14 respect to any of the specific types of 15 garments that he determined were high-end 16 outerwear?</p> <p>17 MR. DANIELS: Objection as to 18 form. Objection, asked and answered.</p> <p>19 A. Again, you will have to ask him 20 that question. I don't look at it as 21 looking at specific units.</p> <p>22 When his analysis was done he 23 appreciated that there was this three 24 versus lamination profit dynamic. I don't 25 want to say he didn't consider any</p> <p style="text-align: right;">Page 495</p>

<p>1 profitability, because I believe he did 2 when he was doing this. 3 MR. WOLKOFF: All right. We can 4 take your break. 5 THE WITNESS: Thank you. 6 THE VIDEOGRAPHER: We are now 7 going off the record. The time is 8 2:40 p.m., this is the end of media 9 label number four. We are off the 10 record counselors. 11 [Off the record.] 12 THE VIDEOGRAPHER: We are back 13 on the record. The time is 2:52 p.m. 14 This is the beginning of media label 15 number 5. 16 BY MR. WOLKOFF: 17 Q. Directing your attention to 18 Exhibits 34 and 34A that we were looking 19 at before the break, you see you have a 20 line item for high-end outerwear in your 21 profitability analysis, correct? 22 A. I do. 23 Q. So you did this profitability 24 analysis as reflected in Exhibits 34 and 25 34A after Mr. Cockrell had already</p> <p style="text-align: right;">Page 496</p>	<p>1 see there is a profitability analysis? 2 A. Yes. 3 Q. And these are the analyses you 4 did, they are your Exhibits 34 and 34A, 5 correct, to your supplemental report? 6 A. Correct. 7 Q. Now looking at Exhibit 34A to 8 your supplemental report, on the left 9 side of this analysis there is the 10 actual, that is that YKK sold 11 \$207,683,564 of high-end T8s, 9s and 10 12 and sold \$1,952,704 of T4s and T5s, 13 correct? 14 A. Well, they sold 12 million in 15 T4s. Their revenue was 12 million. And, 16 yes, the -- 17 Q. Maybe I am misreading it, but 18 under plaintiffs high-end outerwear 19 revenues on the left-hand side of this 20 analysis you show plaintiffs' sales of 21 T4s and T5s at \$1,952,704 -- strike that. 22 I see. 23 You show that YKK sold and 24 derived revenues of \$207,683,564 from 25 selling T8s, 9s and 10s during the</p> <p style="text-align: right;">Page 498</p>
<p>1 provided you with what he believed was 2 high-end outerwear, correct? 3 A. I did it with what he provided 4 before and then working with him to 5 confirm that it was consistent with the 6 award, I used it again. So it turned out 7 to be the same number, so yes. 8 Q. Now, I want to show you 9 Cockrell's supplemental report. Let's 10 have it marked as Exhibit 16 for 11 identification, please. 12 (Donohue Exhibit 16, David 13 Cockrell's supplemental report was so 14 marked for identification, as of this 15 date.) 16 Q. Have you seen this supplemental 17 report of David Cockrell submitted on 18 March 28, 2023 before? 19 A. I have. 20 Q. When is the first time you saw 21 it? 22 A. I saw this right around March 23 28th, the end of March. 24 Q. Let me direct your attention to 25 Mr. Cockrell's Exhibits 1 and 2. Do you</p> <p style="text-align: right;">Page 497</p>	<p>1 relevant period from February 2009 to 2 September 2019, correct? 3 A. Correct. 4 Q. And you show that plaintiffs 5 earned royalty payments of 1,952,704 from 6 those sales of T8s, 9s and 10s during the 7 same relevant time period, right? 8 A. Correct. 9 Q. And then on the right-hand side 10 you have your but-for analysis, if YKK 11 had sold T4s and T5s laminated by Uretek, 12 correct? 13 A. Correct. 14 Q. And you show that if YKK had 15 sold T4s and T5s instead of YKK laminated 16 T8s, 9s and 10s, it would have earned the 17 same amount of revenues, \$207,683,564, 18 correct? 19 A. Yes. 20 Q. You also show Uretek's revenues 21 increasing if T4s and T5s had been sold, 22 rather than T8s, 9s and 10s, from the 23 royalties of \$1,952,704 to \$61,879,867, 24 correct? 25 A. Correct.</p> <p style="text-align: right;">Page 499</p>

<p>1 Q. YKK would have been the one 2 paying that \$61,879,867 out of its 3 pocket, correct? 4 A. Correct. Well, out of its 5 pocket, out of the sales, the margins 6 that it made. 7 Q. So the total revenues from the 8 sale of these water-resistant zippers if 9 YKK had sold T4s and T5s instead of 8s, 10 9s and 10s would have been \$269,563,431, 11 correct? 12 A. Yes, because it's overlapping 13 revenues between the two, right? 14 Q. As opposed to the \$209,636,268 15 total revenues in the real world from 16 YKK's sales of T8s, 9s and 10s, correct? 17 A. Correct. Because the 207 is 18 third-party sales and the 61 is revenue 19 that YKK would be paying. 20 Q. The additional 60 plus thousand 21 dollars of revenue would have come from 22 customers paying more for T4 and T5s than 23 for T8s, 9s and 10s, correct? 24 A. No, it's not additional. It's 25 207. The third party revenues are 207.</p> <p style="text-align: right;">Page 500</p>	<p>1 paying 3 cents as opposed to lamination. 2 Q. So it's the customers who would 3 be paying that additional 60 million 4 dollars, correct? 5 A. No. In this example it's not 6 the customers. It would be coming out of 7 YKK's profits. YKK could choose to try 8 to pass some of it on, maybe they could 9 given the importance of the 10 water-resistant patents. But in this 11 example it assumes that YKK would sell at 12 the same price. 13 Q. If it was coming out of YKK's 14 pocket, then YKK's revenues would have 15 been reduced by 61 million? 16 A. No. 17 Q. Okay. When did you give your 18 profitability analyses, Exhibits 1 and 2 19 to the Cockrell report that we've marked 20 as Exhibit 16 in relationship to his 21 work; do you know? 22 A. It would be in late March. 23 Q. Did you send it to him by 24 e-mail? How did you communicate that to 25 him?</p> <p style="text-align: right;">Page 502</p>
<p>1 As to what YKK would sell to the market 2 for. And yes the parties revenues would 3 be more because the Plaintiff would be 4 charging YKK for its lamination services, 5 but the revenue for the water-resistant 6 market sales that they did make would 7 still be 207 in this example. 8 Q. But you have the total amount 9 of revenues as \$269,563,431. You added 10 together the 207,683,564 with the 11 61,879,867, correct? 12 A. I do. I add those two numbers 13 up. 14 Q. So you're saying the total 15 revenues had YKK sold T4s and T5s instead 16 of T8s, 9s and 10s, would have been 17 during the relevant period \$269,563,431, 18 correct? 19 A. Yeah, because they are both 20 making revenues. 21 Q. And the total revenue in the 22 real world went YKK sold T8s, 9s and 10s 23 was 60 million dollars less than that, 24 right? 25 A. Yes, because they are only</p> <p style="text-align: right;">Page 501</p>	<p>1 A. Well, first we had calls. We 2 talked about it. I talked with him about 3 the analysis. 4 Q. The question is, sir, when did 5 you send your Exhibits 34 and 34A to 6 Mr. Cockrell that he appended to his 7 report that we marked as Exhibit 16 as 8 his Exhibits 1 and 2? Was it by e-mail 9 or some other means? 10 A. It would be by e-mail, and for 11 clarification to counsel. I did not 12 e-mail Mr. Cockrell directly. 13 Q. Did you direct that those 14 analyses be provided to Mr. Cockrell? 15 A. Yes. 16 Q. In your e-mail? 17 A. No, those were the discussions 18 I was talking about. I don't know if I 19 said send these to Cockrell in an e-mail. 20 I don't remember. But we talked to 21 Mr. Cockrell, and as a result of those 22 conversations I eventually sent him this 23 analysis via counsel. 24 Q. Now, the total revenues that 25 you show in Exhibit 34A of \$269,563,431,</p> <p style="text-align: right;">Page 503</p>

<p>1 in the event that YKK had sold T4s and 5s 2 instead of T8s, 9s and 10s, you have 3 allocated 61,879,867 of those revenue 4 dollars to plaintiffs, correct? 5 A. It's not an allocation. It's 6 basically the lamination fee that they 7 would charge YKK. 8 Q. But you still have YKK earning 9 the same amount of revenues that it would 10 have had it earned revenues from selling 11 T8s, 9s and 10s, correct? 12 A. Yes, because that lamination 13 fee is a cost to YKK. Not necessarily a 14 revenue. 15 Q. But you added the two together? 16 A. I do. 17 Q. In your high-end outerwear 18 column, correct? 19 A. I do to look at the parties 20 overall relationship. 21 Q. So you have YKK, as we've 22 already said, earning the same amount of 23 revenues if it were selling T4s and T5s, 24 that it would have earned selling T8s, 9s 25 and 10s, correct?</p> <p style="text-align: right;">Page 504</p>	<p>1 Q. Now, you allocate the profits 2 between YKK and Uretek as reflected in 3 paragraph 37 of your supplemental report, 4 correct? 5 A. Yes. 6 Q. It was YKK who manufactured the 7 zippers that it then laminated to become 8 T8s, 9s and 10s, correct? 9 A. Correct. They manufactured the 10 chain Uretek for them to do the 11 lamination. 12 Q. But with regard to T8s, 9s and 13 10s that YKK sold, it was YKK that 14 manufactured the zippers, correct? 15 A. Correct. 16 Q. It was YKK that laminated the 17 T8s, 9s and 10s, correct? 18 A. That's correct. 19 Q. It was YKK that marketed and 20 sold the T8s, 9s and 10s, correct? 21 A. Correct. 22 Q. It was YKK who identified 23 customers to whom the T8s, 9s and 10s 24 could be sold? 25 A. Correct.</p> <p style="text-align: right;">Page 506</p>
<p>1 A. Correct. In this example I 2 assume the price is the same. Again, if 3 they can pass some of that off which is 4 possible given the importance of the 5 patents, as I say in my supplemental 6 report, but in this example, I assume 7 they charge the same price and meet that 8 demand that already existed. 9 Q. And so you're assuming that YKK 10 would be able to charge the same price 11 for the Uretek laminated T4s and T5s in 12 your but-for world that YKK actually 13 charged for its T8s, 9s and 10s in the 14 real world, correct? 15 A. Correct. I am assuming the 16 same price, the same volume and price. 17 Q. But Uretek's price for the T4s 18 and 5s was consistently higher than YKK's 19 price for its laminated zippers, the T8s, 20 9s and 10s, correct? 21 MR. DANIELS: Objection as to 22 form. 23 A. In the actual world, yes. YKK 24 charged more for four or five relative to 25 8s, 9s and 10s.</p> <p style="text-align: right;">Page 505</p>	<p>1 Q. It was YKK who employed and 2 paid the people who did all of that, 3 correct? 4 A. Yes. I presume they were 5 paying them. 6 Q. In allocating the profits from 7 the sale of high-end outerwear zippers, 8 you allocated more of the profits to 9 Uretek than to YKK, right? 10 A. That's only when limiting it to 11 the high-end outerwear meters. 12 Q. Yes, that's what I am talking 13 about the high-end outerwear meters at 14 issue in this case, you allocated the 15 profits of the sale of the high-end 16 outerwear zippers 54 percent to Uretek 17 and only 46 percent to YKK, right? 18 A. That is how this calculation 19 turns out. I have other caveats that I 20 mention in my report, but, yes, that's 21 how this calculation works, that's the 22 math. 23 Q. Directing your attention to 24 your figure 4 on page 13, you say that 25 the total likely outerwear meters for all</p> <p style="text-align: right;">Page 507</p>

<p>1 customers was 148,826,403, correct?</p> <p>2 A. Correct.</p> <p>3 Q. But you had data for only</p> <p>4 36,615,392 actual meters, correct?</p> <p>5 A. I am sorry, can you read that</p> <p>6 again?</p> <p>7 Q. So you had data for only</p> <p>8 36,615,392 meters, correct?</p> <p>9 A. I had third-party customer</p> <p>10 discovery data for customers that</p> <p>11 represented 36.6 million, yes. I,</p> <p>12 obviously, had sales records for all of</p> <p>13 the data, but just so we're clear, I had</p> <p>14 third-party discovery information for</p> <p>15 customers that represented 36.6 million</p> <p>16 in sales.</p> <p>17 Q. I am looking at your figure 4,</p> <p>18 where you set out the laminated likely</p> <p>19 outerwear sales meters by customer for</p> <p>20 the relevant time period, February 2009</p> <p>21 through September of 2019, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the data that you had from</p> <p>24 the third-party customers for likely</p> <p>25 outerwear meters was 148,826,403 meters,</p> <p style="text-align: right;">Page 508</p>	<p>1 records maintained in the ordinary</p> <p>2 course, they just produced summaries;</p> <p>3 didn't they?</p> <p>4 MR. DANIELS: Objection as to</p> <p>5 form.</p> <p>6 A. They produced summaries from</p> <p>7 their book and records, but this is a</p> <p>8 narrow set of information just for these</p> <p>9 particular purchases.</p> <p>10 Q. They just produced summaries,</p> <p>11 correct?</p> <p>12 MR. DANIELS: Objection as to</p> <p>13 form.</p> <p>14 Q. Not their underlying books and</p> <p>15 records?</p> <p>16 MR. DANIELS: Objection as to</p> <p>17 form.</p> <p>18 A. When you say underlying books</p> <p>19 and records. They didn't produce GLs or</p> <p>20 -- they had to go get this information</p> <p>21 from their systems. So, yes, they used</p> <p>22 their systems to pull this information</p> <p>23 and provide it just for AquaGuard.</p> <p>24 Q. They just provided summaries of</p> <p>25 what was in their underlying books and</p> <p style="text-align: right;">Page 510</p>
<p>1 correct?</p> <p>2 A. The data from YKK, correct.</p> <p>3 Q. You only had data from the</p> <p>4 customers for 36,615,392 meters, correct?</p> <p>5 A. Correct. Those sample</p> <p>6 outerwear customers only represented 36.6</p> <p>7 million of the 148.8 million.</p> <p>8 Q. So you had actual data from</p> <p>9 customers for less than a quarter of the</p> <p>10 total meters, correct?</p> <p>11 A. Yes, that's the, that's the</p> <p>12 representative sample for those</p> <p>13 customers.</p> <p>14 Q. And that data came from 13</p> <p>15 customers that you referred to</p> <p>16 alternatively as sample outerwear</p> <p>17 customers or discovery customers,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. The 13 customers produced that</p> <p>21 data in response to subpoenas that the</p> <p>22 plaintiffs served upon them, correct?</p> <p>23 A. Correct.</p> <p>24 Q. But the 13 customers didn't</p> <p>25 produce copies of their actual books and</p> <p style="text-align: right;">Page 509</p>	<p>1 records, the 13 discovery customers just</p> <p>2 provided summaries, correct?</p> <p>3 MR. DANIELS: Objection as to</p> <p>4 form. Objection, asked and answered.</p> <p>5 A. I don't know how to categorize</p> <p>6 summaries. They had lines and lines of</p> <p>7 detail about where these products went</p> <p>8 and then they produced actual catalogs</p> <p>9 about the jackets and things like that.</p> <p>10 MR. WOLKOFF: Well, let's have</p> <p>11 marked as Exhibit 17 for</p> <p>12 identification an exemplar of what one</p> <p>13 of these 13 customers, Patagonia,</p> <p>14 produced.</p> <p>15 MR. DANIELS: Objection as to</p> <p>16 form and the characterization.</p> <p>17 (Donohue Exhibit 17, example of</p> <p>18 the summaries from the 113 discovery</p> <p>19 clients, was so marked for</p> <p>20 identification, as of this date.)</p> <p>21 Q. Exhibit 17 is an example of the</p> <p>22 summaries that you looked at from the 13</p> <p>23 discovery customers, this one is from</p> <p>24 Patagonia, correct?</p> <p>25 A. Yes, I recall seeing this.</p> <p style="text-align: right;">Page 511</p>

<p>1 Q. Do you know who prepared this 2 summary?</p> <p>3 MR. DANIELS: Objection as to 4 form.</p> <p>5 Q. Was it Patagonia, was it you or 6 someone else?</p> <p>7 A. I would have to go back and 8 look at the subpoena and the data that we 9 got from Patagonia, I am not certain.</p> <p>10 Q. This is not something, Exhibit 11 17, that you prepared, is it?</p> <p>12 A. I don't -- I prepared 13 additional summaries of all of the 14 information to prepare my analysis. I 15 don't think this is one of them. But 16 again, I don't know as I sit here.</p> <p>17 Q. But as far as you can recollect 18 Exhibit 17 isn't something that you 19 prepared. It was produced by Patagonia 20 pursuant to the subpoenas, isn't that 21 true?</p> <p>22 A. That is my understanding. When 23 you say summary, I guess I am hesitating 24 because it's a big listing here. I don't 25 recall a summary aggregating something.</p> <p style="text-align: right;">Page 512</p>	<p>1 other 12 customers in addition to 2 Patagonia, they all produce selections 3 from their underlying books and records 4 maintained in the ordinary course, not 5 their books and records themselves, 6 correct?</p> <p>7 A. Well, I don't understand. I 8 don't think you would produce books and 9 records to do this. You would have to 10 identify for us where you used those 11 zippers.</p> <p>12 Q. Okay.</p> <p>13 A. That is my understanding of 14 what they did.</p> <p>15 Q. Did the other 12 discovery 16 customers produce their underlying books 17 and records from which their similar 18 summaries, similar to Exhibit 17, were 19 produced?</p> <p>20 MR. DANIELS: Objection as to 21 form.</p> <p>22 A. I don't recall the discovery 23 customers producing invoices and 24 underlying manufacturing records. I 25 understand that they provide where they</p> <p style="text-align: right;">Page 514</p>
<p>1 But I do recall these lists.</p> <p>2 Q. These aren't a complete list of 3 Patagonia's underlying books and records, 4 someone made selections from them, 5 correct, summarized them?</p> <p>6 MR. DANIELS: Objection as to 7 form.</p> <p>8 A. Well, I understood that they 9 identified the products that used 10 AquaGuard. So it would always be a part 11 of the records. Not all of the records.</p> <p>12 Q. Where are all the records? Did 13 the Patagonia folks produce all of their 14 underlying records from which Exhibit 17 15 was derived?</p> <p>16 MR. DANIELS: Objection as to 17 form.</p> <p>18 A. Patagonia produced records of 19 the use of the zippers. I don't believe 20 they produced source documents and GL and 21 things like that or inventory reports and 22 invoices, no. I think they replied to 23 the subpoena by telling us where they 24 used the zippers.</p> <p>25 Q. And the same is true for the</p> <p style="text-align: right;">Page 513</p>	<p>1 used it. They did their work to do that.</p> <p>2 Q. So it was the 13 discovery 3 customers that did the work to compile 4 the information that you then used, that 5 they compiled from their original source 6 records, right?</p> <p>7 A. Well, those customers had 8 access to their records. Not me. So, 9 yes, they had to go to their records. 10 Identify where they use these zippers.</p> <p>11 And they produced it in varying forms.</p> <p>12 Q. Is there anything that we can 13 look at in terms of the 13 discovery 14 customers' underlying records to check 15 the accuracy of what they selected that 16 appear in Exhibit 17, and other similar 17 compilations by the other 12 discovery 18 customers?</p> <p>19 MR. DANIELS: Objection as to 20 form.</p> <p>21 A. I don't know. I suppose you 22 can look at public data to see if you can 23 do that. But again, you would have to 24 get access to Patagonia's private 25 records, and so via subpoena this is what</p> <p style="text-align: right;">Page 515</p>

<p>1 was available. And they provided their 2 summaries, their detail, at a product 3 level, of where they were using the 4 zippers. 5 Q. Do you know whether or not the 6 plaintiffs demanded that these 13 7 discovery customers produce their actual 8 underlying records, so that someone could 9 check the accuracy of these summaries as 10 reflected in the exemplar that we marked 11 for Patagonia as Exhibit 17? 12 MR. DANIELS: Objection as to 13 form. 14 A. I don't recall that in the 15 subpoena. It would be unusual to me. 16 Again, you would weren't auditing 17 Patagonia. You were asking them for 18 where do you use these zippers. 19 Q. But sitting here, do you know 20 of any way that the defendants can check 21 the accuracy of these selections that 22 were made by the 13 discovery customers 23 from their underlying books and records 24 as reflected in the exemplar that has 25 been marked for Patagonia as Exhibit 17?</p> <p style="text-align: right;">Page 516</p>	<p>1 MR. DANIELS: Objection as to 2 form. 3 A. Well, the plaintiffs didn't 4 have that information. They requested 5 this data from Patagonia and received it. 6 If YKK -- I suppose to answer your 7 question -- could have approached them as 8 well and gotten more information. 9 Q. But the plaintiffs didn't 10 provide the underlying records that went 11 into the discovery customers' compiling 12 these summaries such as Exhibit 17 for 13 Patagonia? 14 MR. DANIELS: Objection as to 15 form. 16 A. The plaintiffs provided 17 whatever Patagonia produced. 18 Q. Which didn't include the 19 underlying books and records, that's all 20 I am asking you, sir? 21 MR. DANIELS: Objection as to 22 form. 23 A. And I've already said that it 24 did not include invoices, manufacturing 25 records, things of that nature. It</p> <p style="text-align: right;">Page 518</p>
<p>1 MR. DANIELS: Objection as to 2 form. 3 A. I assume they also could have 4 reached out to their customers, if they 5 had concerns. 6 Q. Can you answer my question, 7 please? Do you know of any way that the 8 defendants in this case could check the 9 accuracy of these selections or summaries 10 made by the 13 discovery customers of 11 what's in their underlying books and 12 records as reflected in Exhibit 17? 13 MR. DANIELS: Objection. Asked 14 and answered. 15 A. I think I already said you 16 could look at the jackets, if you could 17 publicly find them. But also YKK could 18 have approached Patagonia, in your 19 question, I guess, and asked them for 20 more information. 21 Q. But the plaintiffs didn't give 22 the defendants the underlying records 23 that went into compiling these summaries 24 as reflected in Exhibit 17 for Patagonia 25 and the others?</p> <p style="text-align: right;">Page 517</p>	<p>1 relied on the third-party customers to 2 provide this information. 3 Q. Now, you had this summary data 4 for only 13 of YKK customers who you call 5 the discovery customers, correct? 6 A. Correct. 7 Q. How many customers, individual 8 or different customers, did YKK have for 9 its water-resistant zippers during the 10 time period February 2009 through 11 September of 2019? 12 MR. DANIELS: Again, I am going 13 to object. I just feel compelled to 14 object that this is all stuff that was 15 already previously covered. It is 16 well beyond any of the permissible 17 discovery allowed by the Court at this 18 point. These are just glaring 19 examples of overreaching the Court's 20 order of permitted discovery. 21 MR. WOLKOFF: I am looking at 22 his figure 4 in his supplemental 23 report submitted after the jury 24 verdict on March 28th, 2023 and asking 25 him about the source materials that</p> <p style="text-align: right;">Page 519</p>

<p>1 went into creating that figure. It 2 absolutely is new material, new 3 questioning. And your statement is 4 absolutely and utterly without basis. 5 I am sorry. I would ask you to please 6 stop interrupting with long baseless 7 objections that interrupt the 8 examination. 9 MR. DANIELS: They are not 10 baseless. They are not long. I am 11 entitled to object. 12 Q. How many customers did YKK have 13 for its water-resistant zippers during 14 the time period February 2009 through 15 September of 2019 in addition to the 13 16 discovery customers whose data you 17 summarized in figure 4 of your 18 supplemental report, dated March 28th, 19 2023? 20 A. The detailed sales data had 21 various customer names, but just looking 22 at it in a customer name area, like 23 different customers and customers could 24 be the same customer, just multiple 25 lines, but it's probably 3, maybe 4000</p> <p style="text-align: right;">Page 520</p>	<p>1 Q. So you had data from customers, 2 from less than 1 percent of YKK's 3 customers during the relevant time 4 period -- 5 A. No, I disagree. 6 Q. -- that form the basis of your 7 opinions, correct? 8 A. No. 9 Q. Okay. You had data from 13 -- 10 strike that. 11 You had customer data from 13 12 discovery customers for the relevant 13 period, correct? 14 A. Correct. 15 Q. And YKK has, as you said, 16 between 3000 and 5000 customers during 17 the relevant time period, that's how many 18 they had? 19 A. I don't think I said 5000. The 20 customer database has many lines of 21 customers, some overlap, but there are 22 thousands of lines in that database. 23 Q. So in terms of percentage of 24 customers whose data you looked at, what 25 was the percentage?</p> <p style="text-align: right;">Page 522</p>
<p>1 lines of different customers over this 2 time period that exist, in terms of 3 customer count. 4 Q. And you had the summary data 5 for only 13 of them from the customers, 6 correct? 7 A. On a customer count basis, 8 only, yes. Meters are much more 9 important, but, yes, on a customer count, 10 there is another several thousand rows in 11 that database. 12 Q. And so what percentage of 13 customer data did you have in arriving at 14 your analyses? 15 A. I had customers that 16 represented 36 million of the 148. 17 Q. That's meters. That's less 18 than 25 percent, right, of the meters? 19 A. It is what it is. But, yes, 20 that's the meter number. And, of course, 21 if you do a customer account, it's a very 22 small percentage. 13 of -- 23 Q. What is it? 24 A. Less than a percent, like a 25 10th of a percent.</p> <p style="text-align: right;">Page 521</p>	<p>1 A. In pure customer count, it's a 2 very small percentage, it's 13 of some 3 4000. A meaningless number, but that's 4 what that would be. 5 Q. You think it's meaningless. 6 What percentage did you have? 7 A. I had almost 25 percent of the 8 data. 9 Q. The 25 percent is a percentage 10 of meters, correct? 11 A. Yes. 12 Q. In terms of a percentage of 13 customers, what did you have? 14 MR. DANIELS: Objection. Asked 15 and answered. 16 Q. Tell me an actual percentage, 17 please. 18 A. I don't have it for you. 19 Whatever 13 is out of a few thousand is. 20 It's a very small percentage. 21 Q. It's less than 1/10th of one 22 percent, is that right? 23 A. I think I said about a 10th of 24 a percent or something like that. It's a 25 small number if you do it by customer.</p> <p style="text-align: right;">Page 523</p>

<p>1 Q. The record will reflect you did 2 not say that until I had to follow-up 10 3 times with you.</p> <p>4 MR. DANIELS: Objection. 5 Harassing the witness again.</p> <p>6 Q. How many zippers in terms of 7 meters did Mr. Cockrell actually review 8 to determine high-end outerwear and not 9 high-end outerwear; do you know?</p> <p>10 MR. DANIELS: Objection as to 11 form.</p> <p>12 A. I don't know if I have it, if I 13 know that as I sit here. It was several 14 thousand items. And those items would 15 have different various levels of meters 16 in them.</p> <p>17 Q. Do you recollect testifying at 18 your first deposition that Mr. Cockrell 19 had actually looked at only around 14.8 20 million meters of outerwear garments in 21 making his assessment of what was 22 high-end outerwear and what was not?</p> <p>23 A. That's what I was trying to 24 remember, what he did. That's what it 25 represents.</p> <p style="text-align: right;">Page 524</p>	<p>1 the 13 discovery customers, correct, in 2 making his assessments of high-end 3 outerwear versus non-high-end outerwear?</p> <p>4 MR. DANIELS: Objection to form. 5 Objection, asked and answered.</p> <p>6 A. Directly, that is fair. But, 7 obviously, Mr. Cockrell has seen many, 8 many jackets and he knew what his 9 customers were selling. I don't want to 10 limit what he did. You can ask 11 Mr. Cockrell.</p> <p>12 Q. I am asking you, sir. 13 Mr. Cockrell didn't actually examine for 14 purposes of his work in this case and the 15 information that he passed on to you, the 16 outerwear of any customers beyond the 13 17 discovery customers, correct?</p> <p>18 MR. DANIELS: Objection as to 19 form. Objection, Mr. Cockrell's 20 reports all speak for themselves.</p> <p>21 A. His sample analysis was based 22 on his third-party discovery, and there 23 were no other sample jackets beyond that. 24 Correct. That's the 13 he looked at.</p> <p>25 Q. And he looked at only around 10</p> <p style="text-align: right;">Page 526</p>
<p>1 Q. Okay. You said that meters 2 were the most important, correct?</p> <p>3 A. Relative to 13 out of 4000, 4 yes.</p> <p>5 Q. So what percentage of meters of 6 these outerwear garments did Cockrell 7 actually look at in making his assessment 8 of high-end outerwear versus not high-end 9 outerwear?</p> <p>10 A. Well, that would be two things. 11 One, he looked at these customers that 12 represent 36 million meters or more 13 importantly 21 million at the high-end 14 outerwear meters. And he also looked at 15 customers as well. So he just looked at 16 customers there, I don't have a count for 17 that.</p> <p>18 Q. He didn't look at the actual 19 garments of other customers other than 20 the 13 discovery customers; did he?</p> <p>21 A. I think there he just looked at 22 websites and also knew what those 23 customers sell.</p> <p>24 Q. Mr. Cockrell did not examine 25 the garments of any customers other than</p> <p style="text-align: right;">Page 525</p>	<p>1 percent of the meters of likely outerwear 2 that you calculated, correct, in making 3 his assessment of what was high-end 4 outerwear and what was not?</p> <p>5 A. Well, that was the sample, the 6 sample size and what he looked at there 7 but those customers represent 36.6 8 million or 21 total.</p> <p>9 Q. You know, sir, can you answer 10 my question?</p> <p>11 A. I am doing my best.</p> <p>12 Q. I don't want to harass you as 13 your counsel here would say. I have my 14 own opinions of what you are doing. But 15 they are not really relevant.</p> <p>16 Mr. Cockrell actually examined 17 only about 10 percent of the total amount 18 of meters in your determination of likely 19 outerwear in making his assessment of 20 high-end outerwear versus not high-end 21 outerwear, correct?</p> <p>22 MR. DANIELS: Objection. Asked 23 and answered.</p> <p>24 A. Again, I would have to go back 25 to look at that. But I recognize that</p> <p style="text-align: right;">Page 527</p>

<p>1 the sample was a smaller amount of meters 2 than the meters sold by those customers. 3 Q. You apply Cockrell's 4 determination of high-end outerwear to 5 thousands of customers and 148 million 6 approximately of meters of zippers, 7 correct? Much more than he examined. 8 A. Well, no. I only apply -- 148 9 is the permitted outerwear market. I 10 only apply his analysis to T8s, 9s and 11 10s functional customers which is not the 12 148. 13 Q. Okay. You applied 14 Mr. Cockrell's determination of what was 15 high-end outerwear and what was not to 16 all of the thousands of customers that 17 YKK had during this time period, correct? 18 A. No, I only applied it to the 19 customers who purchased T8s, 9s and 10s 20 and were functional. 21 Q. How many meters of zippers did 22 you apply Mr. Cockrell's analysis to? 23 A. 112, 113 million, roughly. 24 Q. And how many meters did he 25 actually look at on garments?</p> <p style="text-align: right;">Page 528</p>	<p>1 maximizing profits is part of determining 2 what is and what is not high-end 3 outerwear, correct? 4 A. The jury included that sentence 5 in the definition, yes. 6 Q. Mr. Cockrell is the one who 7 made the determination for plaintiffs in 8 this case of what is high-end outerwear 9 and what isn't high-end outerwear, 10 correct? 11 A. He was part of it. Because his 12 analysis was doing it on part, on the 13 T8s, 9s and 10s, the functional higher 14 prices and things like that. He was part 15 of it. 16 Q. He was the one who made the 17 determination of what is high-end 18 outerwear in this case, correct? 19 A. He is the one that made that 20 ultimate step, but it started with those 21 other steps. 22 Q. I am talking about the 23 determination of what is high-end 24 outerwear and what is not. Mr. Cockrell 25 made that last step in your analysis,</p> <p style="text-align: right;">Page 530</p>
<p>1 A. Again, I am trying to remember 2 that 4.8 million number. I know it was 3 several thousand jackets. I forget the 4 volume, but it was a very sizable sample. 5 Q. What percentage of your 112 6 meters did Mr. Cockrell actually examine, 7 just give me a percentage, please? 8 A. Again, I need to see the 4.8. 9 I remember that calculation, I just don't 10 recall as I sit here. 11 Q. So sitting here, you don't 12 remember? 13 A. Sitting here, I don't remember. 14 I recognize it was, the 36 is the sales 15 data. And that the sample size was 16 smaller. 17 Q. But you accepted his 18 determination and applied it to your 112 19 million meters, correct? 20 A. Correct, I did use his -- 21 Q. For how many customers? 22 A. I used his analysis for the 113 23 million meters and as I said before, the 24 customer line item count is 3 to 4000. 25 Q. The jury determined that</p> <p style="text-align: right;">Page 529</p>	<p>1 correct? 2 A. He made that last step in my 3 analysis, correct. 4 Q. And Mr. Cockrell didn't perform 5 any profitability analysis, you did, sir, 6 correct? 7 MR. DANIELS: Objection as to 8 form. 9 A. I certainly did the 10 calculations in the supplemental report, 11 but as I mentioned before, I understood 12 Mr. Cockrell was aware of this dynamic of 13 the 3 cents versus the lamination 14 profits. 15 Q. Mr. Cockrell didn't perform any 16 profitability analysis in determining 17 what was high-end and what wasn't, you 18 were the one who performed a 19 profitability analysis, correct? 20 MR. DANIELS: Objection as to 21 form. Objection, asked and answered. 22 A. As I said before, I am the one 23 who provided those calculations to 24 Mr. Cockrell. Also, I know Mr. Cockrell 25 was aware of the 3 cents versus</p> <p style="text-align: right;">Page 531</p>

<p>1 lamination profit dynamic before that 2 would result in a meaningful segmentation 3 of the market. 4 Q. Well, you said you didn't 5 provide your profitability charts to 6 Mr. Cockrell until the very end of March, 7 correct? 8 MR. DANIELS: Objection as to 9 form. 10 A. Correct, that's when I provided 11 the charts. 12 Q. And the only profitability 13 analysis in Mr. Cockrell's supplemental 14 report that he appended as Exhibits 1 and 15 2 are your profitability analysis, 16 correct, sir? 17 A. That appears to be the only 18 thing that he appended to his report, 19 correct. 20 Q. Do you know of any -- strike 21 that. 22 With respect to luggage, sir, 23 you're aware that the exclusive license 24 agreement or ELA excluded luggage but 25 also made an exception for sports and</p> <p style="text-align: right;">Page 532</p>	<p>1 page of your Exhibit 12A-R3, to your 2 supplemental report, and let me direct 3 your attention to Finland. Now by 4 Finland, you mean YKK Finland, correct? 5 That particular corporation. 6 A. Yes. 7 Q. And for Finland you had a usage 8 code 1A, a usage code 1E and a usage code 9 1F, right? 10 A. Yes. It might be an I, but I 11 understand what you mean. 12 Q. And under YKK usage name, 1A or 13 1A was luggage general. 1E or 1E was 14 ladies bag and 1F or 1F was small cases, 15 right? 16 A. Yes. 17 Q. And that's the -- those are the 18 three YKK usage names, correct? 19 A. Correct. 20 Q. And then there is a column that 21 you called Normalized Usage, correct? 22 A. Correct. 23 Q. And now what YKK called luggage 24 general you're calling luggage bags, 25 correct?</p> <p style="text-align: right;">Page 534</p>
<p>1 cosmetic bag markets? 2 A. I am aware. 3 Q. So under the ELA you're aware 4 that the parties agreed that YKK could 5 sell its YKK laminated zippers into the 6 sports and cosmetic bag markets, correct? 7 A. Yes, that was excluded from the 8 exclusion, correct. 9 Q. Can you look at Exhibit 12A-R3 10 in your supplemental report, please. 11 A. Do you have a page you want me 12 to go to? 13 Q. I don't think it's numbered. I 14 think it's your Exhibit 12A-R3. 15 A. Okay. 16 Q. Do you have that? 17 A. I do. 18 Q. This exhibit reflects you're 19 identifying the "Luggage" that had YKK 20 laminated zippers based on your review of 21 YKK's records, correct? 22 A. Yes. It's actually identifying 23 the codes that I use to include as 24 luggage among other things, military. 25 Q. So let's turn to the second</p> <p style="text-align: right;">Page 533</p>	<p>1 A. Correct. 2 Q. And what YKK called ladies 3 bags, you're calling luggage bags, 4 correct? 5 A. Correct. 6 Q. And what YKK called small 7 cases, you're calling luggage bags, 8 correct? 9 A. Correct. 10 Q. And then in the fourth column, 11 that's the column that you used to total 12 up your luggage data, correct? 13 A. Correct. 14 Q. And now you're calling luggage 15 bags just luggage, correct? 16 A. Correct. 17 Q. And you're calling luggage bags 18 just luggage, correct? 19 A. Correct. 20 Q. And you're calling luggage bags 21 just luggage. So all three of the 22 entries that YKK had for luggage general, 23 ladies bags, small cases you're now 24 calling luggage for purposes of your 25 luggage analysis, correct?</p> <p style="text-align: right;">Page 535</p>

<p>1 A. Yes. In the data, if it was 2 called IE ladies bag or small cases it's 3 included in luggage. 4 Q. So you treated what YKK called 5 ladies bags as luggage for purposes of 6 your damages opinion, correct? 7 A. I did. 8 Q. You're not an expert on whether 9 ladies bag are luggage; are you, sir? 10 A. No, I am relying on their 11 codes. 12 Q. Well, their codes indicated 13 that this was ladies bags, correct, not 14 luggage? 15 A. It's in the luggage section. 16 Q. But it called the items ladies 17 bags, correct, not luggage? 18 A. It did in the usage name, but 19 IA and IE and IF are luggage. 20 Q. It called the item ladies bags, 21 correct? 22 A. It did within the luggage 23 category. 24 Q. And the other category it 25 called small cases, correct?</p> <p style="text-align: right;">Page 536</p>	<p>1 Q. And you treated bags as luggage 2 for a number of other YKK affiliates 3 besides this one Finland, correct? 4 A. Correct. If it was a luggage 5 core category I still included it. 6 Q. But you know that there is an 7 exception under the ELA for bags. If 8 they are sports bags or cosmetic bags, 9 correct? 10 A. Yes, I know that it's a sports 11 bag or a cosmetic bag exception. 12 Q. Did you determine if any of 13 these ladies bags or other bags were 14 sports bags or cosmetic bags before you 15 included them in your damages analysis as 16 just luggage? 17 A. I did not. It was included as 18 luggage. It doesn't say cosmetic bags. 19 So I did not exclude it. 20 Q. Did YKK have any records that 21 said cosmetic bags, sir? 22 A. Not that I can locate. 23 Q. So you just included them all 24 as luggage, right? 25 A. No, I included only things they</p> <p style="text-align: right;">Page 538</p>
<p>1 A. Within the luggage category, 2 yes. 3 Q. And you treated all three as 4 luggage for purposes of your damages 5 analysis, correct? 6 A. Because it's in the luggage 7 category. 8 Q. And you treated them all as 9 luggage, correct? 10 A. Because it's in the luggage 11 category, yes. 12 Q. Did you look at any of the 13 ladies bags or small cases to determine 14 if, in fact, they could be properly 15 called luggage? 16 A. I did not have discovery about 17 how those bags were used by consumers. 18 Q. Do you know whether or not 19 anybody on behalf of the plaintiffs 20 looked at the ladies bags and the small 21 cases to determine if, in fact, they were 22 luggage as you treated them? 23 A. I am not aware of any discovery 24 from customers. I just know this was a 25 luggage category.</p> <p style="text-align: right;">Page 537</p>	<p>1 called luggage as luggage. 2 Q. Well, they didn't call this 3 luggage and I don't mean to go around the 4 barn but if you want to do it. They 5 called them ladies bag, that's what they 6 called them? 7 A. It was in a core category of 8 luggage. 9 Q. But it was specified as being a 10 ladies bag, right? 11 A. It was. 12 Q. You would agree that some 13 ladies bags could be sports bags to 14 cosmetic bags and, therefore, shouldn't 15 have been part of your damages analysis, 16 correct? 17 A. It's possible. I don't know. 18 The agreement says cosmetics bags. This 19 says ladies bags. 20 Q. But YKK didn't have a separate 21 line item in its records for cosmetic 22 bags; did it? 23 A. I did not find one. They 24 weren't tracking this apparently. 25 Q. So you just treated all of the</p> <p style="text-align: right;">Page 539</p>

<p>1 references to ladies bags as luggage? 2 A. As I said, they called it 3 luggage. So do I. 4 Q. They didn't call it luggage. 5 They called it ladies bags. 6 MR. DANIELS: Objection. You've 7 asked this question 10 times. He's 8 testified over and over what the 9 record states. They speak for 10 themselves. You can't keep arguing 11 with the witness. These have been 12 asked and answered repeatedly. 13 MR. WOLKOFF: You're just 14 supposed to say objection to form in 15 the Southern District of New York. 16 MR. DANIELS: You're supposed to 17 ask each question once. 18 MR. WOLKOFF: And you have not 19 done that. 20 MR. DANIELS: And you haven't 21 done that either. 22 MR. WOLKOFF: You are supposed 23 to say objection to form. Asked and 24 answered. 25 MR. DANIELS: Objection to form.</p> <p style="text-align: right;">Page 540</p>	<p>1 Q. Okay. And you did that not 2 only for your determination of luggage 3 for YKK Finland but also for the YKK 4 Dallian Zipper Company, correct? 5 A. Correct. 6 Q. Where is YKK Dallian Zipper 7 Company located; do you know? 8 A. I believe China. 9 Q. You also did the same thing for 10 YKK Mexico, YKK Malaysia, YKK Russia, 11 correct? 12 A. Russia. And yes, I believe I 13 was consistent. If I included it as a 14 ladies bag, I included it for each 15 affiliate. 16 Q. How much in the way of the 17 exceptions, cosmetic bags or sports bags, 18 did you determine that YKK sold its 19 zippers, waterproof zippers or 20 water-resistant zippers for? 21 A. I am sorry, I don't understand 22 your question. 23 Q. How many meters of 24 water-resistant zippers did you find that 25 YKK sold in connection with cosmetic bags</p> <p style="text-align: right;">Page 542</p>
<p>1 Asked and answered. 2 MR. WOLKOFF: You have 3 consistently violated the rules, 4 Mr. Daniels, at this deposition. 5 A. I'll say it again this is a 6 code -- 7 Q. The code that YKK used said 8 ladies bag, correct? 9 A. The subcode did. But the code, 10 the I is luggage. 11 Q. Right. They may have included 12 the ladies bags in a subcode of luggage 13 but the code they use said ladies bags, 14 correct? 15 MR. DANIELS: Objection. Asked 16 and answered. 17 A. The subcode is ladies bag, yes. 18 Q. And what did you do to 19 determine if those ladies bags were 20 cosmetic bags or sports bags? 21 A. It said it was a ladies bag. 22 It didn't say it was a cosmetic bag. So 23 I did not exclude it. 24 Q. You included it? 25 A. I included it.</p> <p style="text-align: right;">Page 541</p>	<p>1 or sports bags? 2 A. Well, first of all, there was 3 not a cosmetic category, so I could not 4 identify how much of the other, if any, 5 of the other categories was cosmetic 6 bags. 7 For sports bags, there was a 8 sports luggage code -- which I would need 9 to go back and the record and see -- but 10 there was a sports luggage code that was 11 excluded so I excluded that. And there 12 was also a sports code, which was rather 13 sizable. 14 Q. How much in the way of cosmetic 15 bags did you exclude in terms of your 16 determination of luggage for purposes of 17 your -- 18 MR. DANIELS: Objection. I am 19 sorry, I thought you were done. 20 Q. -- for purposes of your damages 21 analysis? 22 MR. DANIELS: Objection. Asked 23 and answered. 24 A. As I said there was no cosmetic 25 code.</p> <p style="text-align: right;">Page 543</p>

<p>1 Q. So how many meters did you 2 exclude?</p> <p>3 A. If there was no code, I did not 4 include or exclude them. But there's no 5 code, so no number to add up.</p> <p>6 Q. So you didn't exclude zero 7 meters for cosmetic bags, correct?</p> <p>8 A. The cosmetic -- there is no 9 cosmetic bag code. I didn't take it out 10 or put it in.</p> <p>11 Q. Did you ask to look at these 12 ladies bags that you were treating as 13 luggage in order to determine whether or 14 not they were luggage before you included 15 them in your damages?</p> <p>16 MR. DANIELS: Objection to form.</p> <p>17 A. I asked for whatever discovery 18 from the customers would be available and 19 the high-end was what was available. 20 There was no luggage discovery.</p> <p>21 Q. Okay. Did you ask to look at 22 any of the ladies bags in which the 23 zippers were sewn to determine if they 24 were properly included by you as luggage?</p> <p>25 A. I did not have access to the</p> <p style="text-align: right;">Page 544</p>	<p>1 rather meaningful. I just don't know if 2 it was -- not all the affiliates had the 3 exact same coding.</p> <p>4 Q. Is there any information in 5 your reports that indicate which YKK 6 entities had a coding for sports bags 7 separated from luggage?</p> <p>8 A. 12A that we were just on would 9 identify that.</p> <p>10 Q. Can you tell me looking at that 11 which of the affiliates had a sports bag 12 category?</p> <p>13 MR. DANIELS: Object. I want to 14 state for the record that natives, all 15 experts exchanged -- including Ms. 16 Kingler -- the natives.</p> <p>17 So are you referring only to the 18 written one or are including the 19 native that Mr. Donohue also provided?</p> <p>20 MR. WOLKOFF: I am referring to 21 the document I put in front of him.</p> <p>22 Okay.</p> <p>23 A. So Exhibit 12A, if you walk 24 through the column, it says "Normalized 25 Usage," the affiliates are on the left,</p> <p style="text-align: right;">Page 546</p>
<p>1 customer's use of the luggage meters. I 2 only had access to YKK's records.</p> <p>3 Q. So the answer is no?</p> <p>4 A. I did not ask. I did not have 5 access to them.</p> <p>6 Q. Did you ask for access to them?</p> <p>7 A. I asked for access to 8 customers, and that resulted in the HEO 9 analysis.</p> <p>10 Q. Did you ask for access to 11 records about what these ladies bags 12 actually were before you included them in 13 luggage?</p> <p>14 A. I don't recall asking that 15 question.</p> <p>16 Q. In your original expert report, 17 paragraph 62B -- by the way, did every 18 YKK affiliate have a category for sports 19 bags, sir, or is it just one or two?</p> <p>20 MR. DANIELS: Objection as to 21 form.</p> <p>22 A. I don't recall. I remember a 23 sports category and then a sports luggage 24 category. I would have to go back and 25 look. I recall the sports category being</p> <p style="text-align: right;">Page 545</p>	<p>1 you can see that there are some sporting 2 goods.</p> <p>3 Q. I am not talking about 4 supporting goods.</p> <p>5 Which YKK affiliates had a 6 specific code for sports bags, if any?</p> <p>7 A. That code was called sports 8 luggage. It was not called sports bags.</p> <p>9 Q. Did any of the YKK entities 10 have a code for sports bags?</p> <p>11 A. I don't believe so. I believe 12 the code I saw was called sports luggage.</p> <p>13 Q. And even then, only a few of 14 the YKK corporations had a code for that, 15 correct?</p> <p>16 A. Correct. I don't have a count 17 as I sit here, but I recall that not all 18 of them had it. For example, Russia had 19 it, sports luggage.</p> <p>20 Q. YKK also internally treated 21 backpacks separately from luggage in its 22 reports, correct?</p> <p>23 A. Well, it depends on what 24 reports. Sometimes they talked about the 25 luggage category. Sometimes they talked</p> <p style="text-align: right;">Page 547</p>

<p>1 about luggage and backpacks. 2 Q. Well, I was beginning to ask 3 you, let me go back to your original 4 report, paragraph 62B. There you cite in 5 your footnote 89, the Bates stamp number 6 YKK0050675. 7 A. Yes, I see that. 8 Q. And that's the same as DX 141. 9 I'll show it to you. 10 (Defendants' Exhibit 141, 11 document Bates stamped YKK0050675, 12 previously marked for identification.) 13 Q. You cited that in the footnote, 14 even though you only put the Bates range, 15 correct? 16 A. Yes. 17 Q. So this is a document that you 18 cited yourself in your original report, 19 correct? 20 A. Yes, at times they talk about 21 both and at times they talk about it as a 22 category. 23 Q. So this is an e-mail from YKK 24 to Stuart Press and also a Caroline 25 Monamoin also with Uretek that we marked</p> <p style="text-align: right;">Page 548</p>	<p>1 referring in the first e-mail on page 2 60562 to backpack/luggage, correct? 3 A. I see that, yes. 4 Q. And here is another one, DX 5 171. 6 (Defendants' Exhibit 171, 7 document Bates stamped YKK0060562 8 previously marked for identification.) 9 Q. Again YKK referred to the 10 backpack/luggage industry, using two 11 different words, backpack and luggage, 12 correct? 13 A. Yes. 14 Q. You treated all backpacks 15 interchangeably for luggage as purposes 16 of calculating your damages, correct? 17 A. If YKK coded them as luggage, 18 then I did. 19 Q. Do you know whether or not all 20 of the backpacks that YKK zippers went 21 into that you treated as luggage were, in 22 fact, luggage? 23 A. I only know that YKK called 24 them luggage in their contemporaneous 25 records.</p> <p style="text-align: right;">Page 550</p>
<p>1 as Exhibit 141; do you see that? 2 A. Yes. 3 Q. And as far back as 2003, the 4 date of this e-mail, YKK talked about 5 luggage and backpack manufacturers, 6 correct? 7 A. Yeah. 8 Q. Separating the two? 9 A. Luggage/backpack in the 10 subject, for example. 11 Q. It doesn't say in that 12 paragraph luggage/backpack. In the body 13 of the e-mail it says "luggage and 14 backpack manufacturers," correct, 15 separately? 16 A. In the body it says for their 17 luggage/backpack in the first sentence. 18 But later on I think it says luggage and 19 backpack, right? 20 Q. Here is another one. 21 Plaintiffs' Exhibit 363. 22 (Plaintiffs' Exhibit 363, 23 document Bates stamped YKK0060562 24 previously marked for identification.) 25 Q. You see this is a YKK e-mail</p> <p style="text-align: right;">Page 549</p>	<p>1 Q. YKK didn't have a separate line 2 item in their books and records for 3 backpacks, correct? 4 A. They had a lot of codes, I 5 don't believe I have seen that one. 6 Q. YKK didn't have a separate code 7 in its records for backpacks, did it? 8 A. I don't believe so. They have 9 a lot of codes. I don't remember seeing 10 a backpack code. 11 Q. In the internal records we 12 looked at, it used two different words, 13 it used backpack and luggage, correct? 14 A. In those e-mails it did. But 15 in their coding, they used luggage and 16 various forms of luggage. 17 Q. But in their coding for 18 luggage, they had all kinds of things 19 included that one might not think of as 20 luggage, correct? 21 MR. DANIELS: Objection to form. 22 A. They had luggage in multiple 23 things. I am not defining luggage in the 24 ELA. They had luggage in multiple 25 things.</p> <p style="text-align: right;">Page 551</p>

<p>1 Q. But you didn't break out or try 2 to break out backpacks from the luggage, 3 you just included it all in your damages 4 analysis?</p> <p>5 A. If YKK called it luggage, I 6 included it, except for the sports 7 luggage.</p> <p>8 Q. YKK didn't call it anything. 9 It just didn't code it separately as 10 backpacks. It had it in a luggage 11 category on its books and records, 12 correct?</p> <p>13 A. It called it luggage on its 14 books and records, yes. Assuming they 15 did that.</p> <p>16 Q. They called golf bags, coded 17 them at least as luggage, correct?</p> <p>18 A. I don't know if it did that, 19 because there is also sporting goods 20 categories.</p> <p>21 Q. Do you see, for example, in 22 your first page for Dallian about 23 two-thirds of the way down the page, it 24 coded jeans as luggage, right -- let me 25 strike that.</p> <p style="text-align: right;">Page 552</p>	<p>1 items of luggage or sports bags or 2 cosmetic bags or backpacks in connection 3 with your assessment of damages based on 4 luggage?</p> <p>5 A. No, I believe his was limited 6 or focused on high-end outerwear.</p> <p>7 Q. Did you look at any items of 8 luggage or sports bags or cosmetic bags 9 or backpacks in connection with your 10 assessment of damages based on luggage?</p> <p>11 MR. DANIELS: Objection as to 12 form.</p> <p>13 A. No, there was no discovery from 14 luggage customers. I relied on YKK's 15 records.</p> <p>16 Q. Plaintiffs didn't take any 17 discovery of any of the customers 18 manufacturing cosmetic bags or backpacks 19 or sports bags, sir, and, therefore, they 20 didn't provide you with any, correct?</p> <p>21 A. The plaintiffs took discovery 22 of HEO customers, of high-end customers. 23 I don't have any discovery from luggage 24 customers.</p> <p>25 Q. You assume in your but-for</p> <p style="text-align: right;">Page 554</p>
<p>1 A. No.</p> <p>2 Q. Would you agree, sir, that at 3 least some backpacks are not 4 appropriately called luggage in the real 5 world?</p> <p>6 MR. DANIELS: Objection as to 7 form.</p> <p>8 A. I don't know, we are talking 9 about luggage in an ELA. So I used YKK's 10 codes to do that.</p> <p>11 Q. Would you agree, sir, that in 12 the real world, there are backpacks that 13 are not appropriately considered luggage?</p> <p>14 MR. DANIELS: Objection as to 15 form.</p> <p>16 A. Again, luggage could be taken 17 on an airplane. It could be what you 18 carry things in. I am using YKK's codes 19 to do what I did.</p> <p>20 Q. And you included any backpacks 21 as luggage for purposes of your damages 22 analysis, correct?</p> <p>23 A. If YKK coded them as luggage, 24 they are included.</p> <p>25 Q. Did Mr. Cockrell examine any</p> <p style="text-align: right;">Page 553</p>	<p>1 opinions of damages for luggage that YKK 2 would have been able to sell all of the 3 items you determined to be luggage with 4 T4s and T5s instead of T8s, 9s and 10s, 5 correct?</p> <p>6 A. No.</p> <p>7 Q. You have no basis for 8 concluding that customers would have 9 purchased the items you included as 10 luggage, if instead of having YKK 11 laminated zippers they had Uretek 12 laminated zippers, correct?</p> <p>13 A. I do. I do have evidence of 14 that. I know that the zipper was very 15 important to these customers, and there 16 is demonstrated demand. There is no 17 alternatives. It was profitable.</p> <p>18 Q. You keep saying, again, there 19 were no alternatives. But you actually 20 didn't say that there were no 21 alternatives as we have been through it 22 several times, but you keep saying the 23 same erroneous thing. You didn't say 24 that there were no alternatives in your 25 report; did you, sir?</p> <p style="text-align: right;">Page 555</p>

<p>1 A. I focused on the demand that 2 did exist. And that demand existed, as I 3 say in my report, despite any 4 competition. 5 Q. Did you say that there were no 6 alternatives in your report, sir? 7 A. I say that there was no 8 infringing alternatives and I mention, 9 again, in my supplemental that they made 10 these sales despite any competition, in 11 whatever form or flavor that is. 12 Q. Did you say that there were no 13 alternatives to the T8s, 9s and 10s or 14 T4s and T5s in your report, sir? 15 MR. DANIELS: Objection as to 16 form. 17 A. I said there was no 18 non-infringing alternatives. I also 19 mentioned it was an industry standard. 20 And I mentioned it was sold despite that 21 competition. 22 Q. Did you say that there were no 23 alternatives to the T8s, 9s and 10s or 24 T4s and T5s in your reports, sir, did you 25 say that specific thing?</p> <p style="text-align: right;">Page 556</p>	<p>1 MR. DANIELS: Objection as to 2 form. 3 A. Well, I was looking at my first 4 report. Let me just look at that and 5 confirm. 6 (Witness reviews document.) 7 A. In my first report, page 67, 8 paragraph 137, I do say that YKK's only 9 source of a water-resistant zipper for 10 the excluded market was the plaintiffs. 11 Q. That's not what I asked you. 12 A. But, no, that's the part of my 13 report where I address it. 14 Q. So the answer is no? 15 A. I don't say it that specific 16 way. I lay out alternatives in a 17 different way and demand. 18 Q. You didn't check or compare the 19 prices of Uretek laminated zippers for 20 luggage versus the prices of YKK 21 laminated zippers for luggage during the 22 relevant time period; did you, sir? 23 A. I was aware of some documents 24 that said that. I did consider the 25 discounted luggage price in my report.</p> <p style="text-align: right;">Page 558</p>
<p>1 A. I would have to go back and 2 look and see if that is somewhere in 3 there. I say several things in my demand 4 section about how this is their own 5 provider. 6 Q. Do you remember saying that, 7 sir? 8 A. I have to go back and look. 9 Q. Go ahead. I think we have been 10 through this already, yet you keep saying 11 that you said that there were no 12 alternatives when you didn't say it. 13 MR. DANIELS: I object that -- 14 Q. Look at paragraphs 20, 23 and 15 25, again, please? 16 MR. DANIELS: I object. We have 17 been through it already. Asked and 18 answered. 19 A. Of the supplemental? 20 Q. Yes. 21 A. Okay. 22 Q. Now, that you've looked at your 23 report, did you say there are no 24 alternatives to the T4, T5s, T8s, 9s and 25 10s in the marketplace in your report?</p> <p style="text-align: right;">Page 557</p>	<p>1 But I don't talk about other zipper 2 prices in my report. 3 Q. You don't talk about the prices 4 of Uretek laminated zippers for luggage 5 versus the prices of YKK laminated 6 zippers or the price of other 7 competitors' zippers for luggage in your 8 report; do you, sir? 9 MR. DANIELS: Objection as to 10 form. 11 A. Well, I certainly talk about 12 the YKK prices for T8s, 9s and 10s and 13 T4s and T5s and I know in the actual they 14 are more. We talked about that. I 15 definitely do that. 16 Q. I am asking you about the 17 actual prices. Did you compare in your 18 report the prices that were charged for 19 T4 or T5s zippers used in luggage versus 20 T8s, 9s and 10s or RCPU zippers used in 21 luggage at all, sir? 22 A. Yes, because my sales data 23 included that for YKK sales, which 24 included those. 25 Q. Did you compare, make any</p> <p style="text-align: right;">Page 559</p>

<p>1 comparison in your reports between the 2 Uretek laminated zippers for luggage 3 versus third-party competitors prices for 4 their water-resistant zippers used in 5 luggage? 6 MR. DANIELS: Objection to form. 7 A. I did not, I did not have data 8 about third parties, as we talked about 9 this morning, I did not compare that. 10 Q. Did you conclude in your 11 reports any comparison of the delivery 12 times for Uretek laminated zippers for 13 luggage versus competitors' delivery 14 times of their zippers for luggage? 15 A. I did not have delivery time 16 data. I looked at some documents as we 17 looked at this morning that cite 18 one-offs, but I did not have delivery 19 time data. 20 Q. So the answer is no? 21 A. The answer is no. 22 Q. You're aware that YKK and 23 Uretek had a number of discussions during 24 the period at issue about resolving their 25 issues concerning T4s and T5s versus T8s,</p> <p style="text-align: right;">Page 560</p>	<p>1 recall besides the parties discussing 2 royalty rates? 3 A. I recall volume commitments as 4 being another one of the concerns from 5 Uretek -- from YKK to Uretek. 6 Q. You said there were many 7 components, what else do you recall 8 besides that one and the royalty rates 9 being discussed between the parties? 10 A. I recall that these 11 negotiations were going on for several 12 years. 13 Q. I am asking you about the 14 components, not the time period. What 15 other components do you remember being 16 discussed between the parties, you said 17 there were many of them? 18 A. Well, there was -- I guess I 19 was counting that they were going back 20 and forth. There were many things being 21 exchanged with different terms. 22 Q. What were they, sir? 23 A. They were, basically, going 24 back and forth about how to resolve this, 25 which included different -- I kind of</p> <p style="text-align: right;">Page 562</p>
<p>1 9s and 10s? 2 A. I am. 3 Q. And they talked about increase 4 the royalty rate from 3 cents per meter 5 to something higher than that, correct, 6 during those discussions? 7 A. They talked about a lot of 8 things. I recall something similar to 9 that, but it had other conditions. 10 Q. Do you recall that Uretek and 11 YKK discussed from time to time 12 increasing the royalty rate on the sale 13 of the T8s, 9s and 10s zippers? 14 A. Generally, I recall during the 15 time trying to resolve all of this there 16 were negotiations going back and forth. 17 Q. On increasing the royalty rate, 18 sir? 19 A. That was one of the many 20 components discussed. 21 Q. What were the other components? 22 A. Over time I recall other 23 commitments, you know, volume commitments 24 and things like that. 25 Q. What, specifically, do you</p> <p style="text-align: right;">Page 561</p>	<p>1 remember also a percentage HEO at some 2 point that might be assumed, different 3 volume commitments and the different 4 royalties. 5 Q. You already mentioned the 6 volume commitments and the royalties. 7 Mentioning them again doesn't make for 8 multiple components. But you do remember 9 that increasing the royalty payments were 10 a topic discussed between the parties as 11 a means of resolving their differences? 12 MR. DANIELS: Objection as to 13 the form of the question. 14 A. I do, in settling this 15 litigation, I do remember that. 16 Q. Let me show you Exhibit DX 586. 17 (Defendants' Exhibit 586, 18 document Bates stamped YKK0713410, 19 previously marked for identification.) 20 Q. You see that these are minutes 21 or at least a memo reflecting a meeting 22 between YKK and Uretek during the 23 relevant time period, July 12th, 2012? 24 MR. DANIELS: Objection. Lack 25 of authentication.</p> <p style="text-align: right;">Page 563</p>

<p>1 A. I see that here.</p> <p>2 Q. You saw this in connection with</p> <p>3 your work on your supplemental report,</p> <p>4 correct?</p> <p>5 A. I received all of the exhibits,</p> <p>6 but I don't remember seeing this.</p> <p>7 Q. Well, you said that you had</p> <p>8 considered all of them. We have been</p> <p>9 through this before. This was one of</p> <p>10 them. Did you consider this exhibit,</p> <p>11 Exhibit 586?</p> <p>12 A. I searched on things to find</p> <p>13 things. I just don't recall reading</p> <p>14 this. I have seen things like this. But</p> <p>15 I don't recall seeing this one.</p> <p>16 Q. Well, why did you say you</p> <p>17 considered all of the exhibits, if you</p> <p>18 didn't even read some? Why did you say</p> <p>19 that?</p> <p>20 MR. DANIELS: Objection. Asked</p> <p>21 and answered numerous times today.</p> <p>22 A. Because in preparation for</p> <p>23 trial, multiple times, I have received</p> <p>24 them. And I have been searching on them</p> <p>25 and searching on things and so I include</p> <p style="text-align: right;">Page 564</p>	<p>1 considering it?</p> <p>2 A. I don't remember seeing</p> <p>3 specifically 586 before.</p> <p>4 Q. Okay. So in the middle, there</p> <p>5 is a statement next to initial P; do you</p> <p>6 see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. You have to answer.</p> <p>9 A. I am sorry, yes. And what</p> <p>10 number I should ask you, thank you. You</p> <p>11 say the initial P, there is numbers of</p> <p>12 initial Ps.</p> <p>13 Q. Yes. And do you see up above</p> <p>14 in the second paragraph that P is defined</p> <p>15 as Press's statement, Stuart Press's</p> <p>16 statement?</p> <p>17 A. I see that.</p> <p>18 Q. So about two-thirds of the way</p> <p>19 down there is a statement attributed to</p> <p>20 Stuart Press that "Uretek will propose a</p> <p>21 new definition."</p> <p>22 Do you see that?</p> <p>23 A. I see that.</p> <p>24 Q. So in this memo, the following</p> <p>25 statement is attributed to Stuart Press</p> <p style="text-align: right;">Page 566</p>
<p>1 them.</p> <p>2 Q. You remember searching and</p> <p>3 searching on Exhibit 586?</p> <p>4 A. No. Searching against all of</p> <p>5 the population.</p> <p>6 Q. So you said in your report that</p> <p>7 you had considered all of the exhibits</p> <p>8 which would include Defendants' Exhibit</p> <p>9 586, but that's not true. You don't even</p> <p>10 recall reading Defendants' Exhibit 586,</p> <p>11 let alone considering it?</p> <p>12 MR. DANIELS: Objection as to</p> <p>13 form. Objection, asked and answered</p> <p>14 numerous times today.</p> <p>15 A. I searched for information. I</p> <p>16 wanted to make sure we understood what</p> <p>17 population we had, and so I included it.</p> <p>18 But you're right, I don't remember this</p> <p>19 particular form. I remember the types of</p> <p>20 topics being discussed, because I have</p> <p>21 seen documents concerning the settlement</p> <p>22 of this litigation that talk about things</p> <p>23 like this.</p> <p>24 Q. Do you remember seeing</p> <p>25 Defendants' Exhibit 586 before and</p> <p style="text-align: right;">Page 565</p>	<p>1 during the relevant time period July</p> <p>2 12th, 2012, "Uretek will propose a new</p> <p>3 definition and a means to compensate</p> <p>4 Uretek through a higher royalty for</p> <p>5 high-end outerwear made in the past and</p> <p>6 what will be made in the future."</p> <p>7 A. I see that's what it says.</p> <p>8 Q. So the parties were discussing</p> <p>9 resolving their differences by paying an</p> <p>10 increased royalty rate, correct?</p> <p>11 A. That was one of the things</p> <p>12 discussed --</p> <p>13 Q. Okay.</p> <p>14 A. -- during this time.</p> <p>15 Q. Let me show you Defendants'</p> <p>16 Exhibit 611.</p> <p>17 (Defendants' Exhibit 611,</p> <p>18 document Bates stamped YKK0004615,</p> <p>19 previously marked for identification.)</p> <p>20 Q. You see, that this is an e-mail</p> <p>21 to YKK by Stuart Press during the</p> <p>22 relevant time period October 1, 2013?</p> <p>23 A. Okay.</p> <p>24 Q. And you see that on the second</p> <p>25 page 4616 that Mr. Press talked about</p> <p style="text-align: right;">Page 567</p>

<p>1 resolving the parties' differences with a 2 higher royalty; for example, 15 cents a 3 meter on outerwear luggage and backpacks 4 from 2014 going forward, correct? 5 A. I see that. That's one of the 6 components in here. There are others, 7 but that is one of them. 8 Q. Let me show you Defendants' 9 Exhibit 660. 10 (Defendants' Exhibit 660, 11 document Bates stamped YKK0714527 12 previously marked for identification.) 13 Q. You see this is a memo of YKK 14 meeting with Stuart Press, again, during 15 the relevant time period July 28th, 2014? 16 MR. DANIELS: Objection. Lack 17 of authentication. 18 A. Yes. 19 Q. If you can turn to page 714528, 20 this is again an exhibit that you 21 considered in connection with your report 22 in this matter, correct? 23 A. Yeah, I have seen this before. 24 Q. And on page 714528 there is a 25 reference to Uretex offering Stuart Press</p> <p style="text-align: right;">Page 568</p>	<p>1 this case for high-end outerwear, luggage 2 or military items, correct? 3 A. No. Lost profits is the 4 appropriate remedy in my opinion, not a 5 royalty. 6 Q. Okay. That's not what I asked 7 you. You didn't make any attempt to 8 determine a reasonable royalty rate in 9 this case for high-end outerwear, luggage 10 or the military items in dispute; did 11 you? 12 A. No, I did not prepare one, I 13 did not prepare a royalty analysis. 14 MR. WOLKOFF: Okay. I want to 15 have marked as the next exhibit the 16 statement by YKK that remains at issue 17 in this case. Let's have it marked as 18 Exhibit 18 for identification, please. 19 (Donohue Exhibit 18, statement 20 by YKK was so marked for 21 identification, as of this date.) 22 MR. DANIELS: I am going to 23 object to form on the description. 24 MR. WOLKOFF: I am sorry, there 25 wasn't any question.</p> <p style="text-align: right;">Page 570</p>
<p>1 -- strike that. 2 And on page 714528, there is a 3 reference to YKK offering to Stuart Press 4 of Uretex a new royalty rate of 9 cents a 5 meter, correct? 6 A. Yeah, I see that bullet, about 7 two-thirds down. 8 Q. So there were various occasions 9 on which the parties discussed the 10 resolution of their issues by increasing 11 the royalty rate from 3 cents to 12 something a bit higher, correct? 13 A. Yes, that is certainly one of 14 the things they discussed. 15 Q. Did you make any attempt to 16 determine a reasonable royalty rate in 17 this case for high-end outerwear or 18 luggage or military items? 19 A. No, I have not performed a 20 Georgia Pacific analysis. As I mentioned 21 in the prior deposition, a lot of the 22 components are here but I did not perform 23 a Georgia Pacific analysis. 24 Q. So you didn't make any attempt 25 to determine a reasonable royalty rate in</p> <p style="text-align: right;">Page 569</p>	<p>1 MR. DANIELS: I am objecting to 2 the description. 3 MR. WOLKOFF: You're objecting 4 to me marking something? 5 MR. DANIELS: No. You described 6 this. I am objecting to your 7 description into the record. 8 MR. WOLKOFF: What's the 9 objection? 10 MR. DANIELS: I put it on the 11 record. You told me not to make 12 speaking objections a little while 13 ago. 14 MR. WOLKOFF: I asked you not to 15 make speaking objections, but that 16 doesn't mean I can't ask you the basis 17 for an objection when it's not 18 apparent to me. 19 MR. DANIELS: There may be other 20 statements that are relevant in this 21 case now. 22 Q. Looking at Exhibit 18 for 23 identification, do you see this as the 24 statement that is still at issue in this 25 case according to the court order, "YKK</p> <p style="text-align: right;">Page 571</p>

<p>1 has the exclusive right to manufacture, 2 use, sell and import zippers 3 incorporating this water-repellent 4 technology"?</p> <p>5 A. Yes, I am aware of this 6 statement from the Court's filing.</p> <p>7 Q. And this is the statement that 8 forms the basis, as you're aware of 9 plaintiffs' Lanham Act claim, correct, in 10 this case?</p> <p>11 A. Yes. I'm let the plaintiffs 12 speak for its total basis, but I 13 understand this was the statement that 14 was found in the summary judgment motion 15 to be false.</p> <p>16 Q. Let me place in front of you 17 what's already been marked apparently in 18 three different places, Plaintiffs' 19 Exhibit 116, Blunt Exhibit 46 and 20 Sarumaru Deposition Exhibit 65. 21 (Plaintiffs' Exhibit 116, a 22 one-page printout describing the 23 AquaGuard water-repellent zippers from 24 YKK's website for identification.) 25 Q. Do you recognize this as a page</p> <p style="text-align: right;">Page 572</p>	<p>1 specifically, to paragraph 44. 2 A. I am there.</p> <p>3 Q. You point out that YKK issued 4 reports indicating it attended the 2003 5 summer outdoor retail show and the 2003 6 winter market trade show, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And then in the next paragraph 9 of your supplemental report, paragraph 10 45, you say that "YKK distributed 11 marketing materials, its flyer, at these 12 trade shows," correct?</p> <p>13 A. I do.</p> <p>14 Q. You then cite or say in 15 paragraph 45 that "There was a flyer that 16 was allegedly distributed by YKK at a 17 trade show in 2008," correct?</p> <p>18 A. Correct.</p> <p>19 Q. And then you go on to say that 20 "Similar or identical flyers were used as 21 early as 2003," correct?</p> <p>22 A. Yes.</p> <p>23 Q. But you haven't calculated 24 damages here as early as 2003. You 25 calculated Uretek's purported damages</p> <p style="text-align: right;">Page 574</p>
<p>1 describing the AquaGuard water-repellent 2 zippers from YKK's website?</p> <p>3 A. I do.</p> <p>4 Q. And you would agree, sir, that 5 this selection from the YKK website 6 doesn't have the statement at issue that 7 we've marked as Exhibit 18, correct?</p> <p>8 A. I am checking it, but not to my 9 knowledge.</p> <p>10 Q. You're not aware of the 11 statement at issue ever appearing on 12 YKK's website, at any time, correct?</p> <p>13 A. I am not aware of that, as I 14 sit here.</p> <p>15 Q. There is nothing in your report 16 that says it did; is there?</p> <p>17 A. Correct.</p> <p>18 Q. In terms of marketing flyers, 19 if we look at your supplemental report, 20 and let me direct your attention 21 specifically to Exhibit 44 -- I meant 22 paragraph 44.</p> <p>23 In terms of marketing flyers, 24 if we look at your supplemental report 25 let me direct your attention,</p> <p style="text-align: right;">Page 573</p>	<p>1 from February of 2009 to September 30, 2 2019, correct?</p> <p>3 A. Correct, that was the available 4 period for damages.</p> <p>5 Q. You don't provide a single 6 example of YKK marketing flyers with the 7 language at issue that's reflected in 8 Donohue Deposition Exhibit 18, dated from 9 February 2009 on, that is during the 10 relevant time period at issue; do you, 11 sir?</p> <p>12 MR. DANIELS: Objection as to 13 form.</p> <p>14 A. I cite other flyers, that was 15 just the first one. I believe there are 16 some flyers from the 2008 and '09 time 17 period. And maybe in 2015. So I do cite 18 those examples.</p> <p>19 Q. I am asking about flyers that 20 themselves were dated, that were prepared 21 during the time period of February 2009 22 through September 2019, the relevant time 23 period.</p> <p>24 Do you recall citing to any 25 flyers that were dated during that time</p> <p style="text-align: right;">Page 575</p>

<p>1 period?</p> <p>2 MR. DANIELS: Objection as to</p> <p>3 form.</p> <p>4 A. When you say dated, like a</p> <p>5 copyright date or something? When I say,</p> <p>6 when I use the years before, they are in</p> <p>7 e-mails or a report that's from the time</p> <p>8 period. So I don't know when that flyer</p> <p>9 was created. Correct. I just know that</p> <p>10 flyer was in use in 2008 and '09 and '15,</p> <p>11 for example.</p> <p>12 Q. Do you cite to any YKK</p> <p>13 marketing flyers that were prepared or</p> <p>14 created during the relevant time period</p> <p>15 February 2009 through September 2019, to</p> <p>16 your knowledge?</p> <p>17 MR. DANIELS: Objection as to</p> <p>18 form.</p> <p>19 A. Aside from the copyright dates</p> <p>20 on them, if there was one, I don't know</p> <p>21 when these flyers were created. I just</p> <p>22 know when they are being used.</p> <p>23 Q. All right. So let's take a</p> <p>24 look at when they are being used. We</p> <p>25 will look at your report.</p> <p style="text-align: right;">Page 576</p>	<p>1 by YKK during the relevant time period;</p> <p>2 do you, sir?</p> <p>3 A. No, that's not correct. I have</p> <p>4 Mr. Saramaru's testimony suggesting that</p> <p>5 flyers such as these were used to promote</p> <p>6 product, the flyers' purpose is promoting</p> <p>7 a product.</p> <p>8 Q. I am asking you, specifically,</p> <p>9 sir, about this flyer, Plaintiffs'</p> <p>10 Exhibit 79E that contains the statement</p> <p>11 at issue on page 10319.</p> <p>12 Do you have any evidence that</p> <p>13 this flyer was used by YKK or circulated</p> <p>14 by YKK during the relevant time period,</p> <p>15 February 2009 through September of 2019?</p> <p>16 A. Well, as I was saying I</p> <p>17 understand what they were for, they were</p> <p>18 for selling to customers. Mr. Saramaru's</p> <p>19 testified that flyers like these are used</p> <p>20 for selling to customers.</p> <p>21 Q. Do you have any evidence --</p> <p>22 A. I am not done, respectfully.</p> <p>23 And I thought I mentioned the report in</p> <p>24 that footnote where I've seen the flyers</p> <p>25 referenced in the outerwear reports that</p> <p style="text-align: right;">Page 578</p>
<p>1 You cite these various flyers</p> <p>2 in footnote 61 of your supplemental</p> <p>3 report, correct?</p> <p>4 A. Yes.</p> <p>5 Q. So let's go through them. The</p> <p>6 first one you cite is a flyer appended to</p> <p>7 PX 79E, correct?</p> <p>8 A. Yeah. I mean I cite an e-mail</p> <p>9 or a report. But the flyer I am citing</p> <p>10 is the PX 79E.</p> <p>11 Q. So let me place that,</p> <p>12 Plaintiffs' Exhibit 79E in front of you.</p> <p>13 (Plaintiffs' Exhibit 79E,</p> <p>14 document Bates stamped YKK0010318,</p> <p>15 previously marked for identification.)</p> <p>16 Q. Now, this flyer marked as</p> <p>17 Plaintiffs' Exhibit 79E doesn't have a</p> <p>18 date on it, correct?</p> <p>19 A. It does not. The flyer itself</p> <p>20 doesn't. The other document I cite, I</p> <p>21 think it provides the date of its use.</p> <p>22 But not when this flyer was created.</p> <p>23 Q. You don't have any evidence</p> <p>24 that this flyer marked as Plaintiffs'</p> <p>25 Exhibit 79E was ever circulated or used</p> <p style="text-align: right;">Page 577</p>	<p>1 are indicating that they are being used.</p> <p>2 But, yes, this, 79E, I just know flyers</p> <p>3 like this were being used.</p> <p>4 MR. WOLKOFF: I move to strike.</p> <p>5 Q. Do you have any evidence --</p> <p>6 MR. DANIELS: I object to the</p> <p>7 motion to strike.</p> <p>8 Q. Do you have any evidence that</p> <p>9 Plaintiffs' Exhibit 79E was used or</p> <p>10 distributed by YKK during the relevant</p> <p>11 time period, that is from February of</p> <p>12 2009 through September of 2019 --</p> <p>13 MR. DANIELS: Objection. --</p> <p>14 Q. -- this flyer?</p> <p>15 MR. DANIELS: Objection. Asked</p> <p>16 and answered.</p> <p>17 A. I explained that I have</p> <p>18 evidence of the use of these flyers,</p> <p>19 types of flyers. You're asking this</p> <p>20 piece of paper, I don't know. It looks</p> <p>21 like the same flyer in the pictures. And</p> <p>22 it looks like the same flyer in a</p> <p>23 deposition.</p> <p>24 Q. Do you know whether this flyer,</p> <p>25 Plaintiffs' Exhibit 79E, was used or</p> <p style="text-align: right;">Page 579</p>

<p>1 circulated by YKK during the relevant 2 time period February 2009 through 2019? 3 MR. DANIELS: Objection. Asked 4 and answered. 5 A. Same answer. Mr. Sarumaru 6 testified that they are used for that 7 purpose. That they are a flyer used for 8 selling. I have seen pictures of them at 9 these shows. I have seen e-mails of them 10 using these flyers. So that's the 11 evidence that I have. 12 Q. Do you have any evidence that, 13 specifically, Plaintiffs' Exhibit 79E was 14 used by YKK during the relevant time 15 period? 16 MR. DANIELS: Objection. Asked 17 and answered. 18 A. Not beyond what I just said. 19 Q. Do you have any evidence 20 specific to Plaintiffs' Exhibit 79E that 21 it was used by YKK during the relevant 22 time period from February 2009 through 23 September of 2019? 24 MR. DANIELS: Objection, asked 25 and answered. This is sixth or fifth</p> <p style="text-align: right;">Page 580</p>	<p>1 am asking you -- it's very simple -- I 2 don't know why you can't answer the 3 question. It's true I asked you the 4 question a number of times. I am asking 5 you specifically about Plaintiffs' 6 Exhibit 79E. If you don't answer the 7 question, we are going to move to compel. 8 Do you have any knowledge that 9 Plaintiffs' Exhibit 79E was used by YKK 10 during the relevant time period, February 11 2009 through September 2019, this 12 specific flyer -- 13 MR. DANIELS: Objection. Asked 14 and answered. 15 Q. -- marked as Exhibit 79E? 16 MR. DANIELS: And if we have to 17 get the Court on the phone to stop 18 this harassment, then we will. Asked 19 and answered. 20 A. That time you asked me any 21 knowledge. The only information I have 22 is about this: That it's for this 23 purpose. Mr. Sarumaru testified it's 24 being used for that purpose. I have seen 25 it at trade shows. I have seen it in</p> <p style="text-align: right;">Page 582</p>
<p>1 time. Whatever it is, we can get the 2 count, he's answered the question. 3 You may not like the answer. But 4 we're at the point where it's 5 harassment asking the same question 6 five or six times, whatever we are up 7 to again. 8 A. I can go through it again. But 9 that's the evidence that I have of its 10 use. That's it. I have Mr. Sarumaru's 11 testimony. I have it's a marketing 12 flyer. I have that it's used at these 13 outdoor shows. There are pictures. I 14 have it attached to some e-mails. That's 15 what I've seen in the record. 16 Q. Do you know of anything 17 reflecting that Plaintiffs' Exhibit 79E 18 was given to any particular customer 19 during the relevant time period, 20 specifically, Plaintiffs' Exhibit 79E? 21 A. Not beyond what I already said. 22 These are used for that purpose. I don't 23 have an e-mail to a particular customer. 24 Q. I am not asking you whether or 25 not something is used for a purpose. I</p> <p style="text-align: right;">Page 581</p>	<p>1 their outdoor reports. I have seen it 2 e-mailed. But obviously, I wasn't at the 3 trade show. When you say any knowledge, 4 if that bar is me being there; no, I 5 wasn't there. 6 Q. I am asking about a specific 7 time period. I am not asking whether it 8 was ever used, which is all that you're 9 responding to. 10 I am asking for whether you 11 know if Plaintiffs' Exhibit 79E was used 12 by YKK during the time period February 13 2009 through September of 2019, that time 14 period. 15 MR. DANIELS: Objection. 16 Q. And this specific Exhibit. 17 MR. DANIELS: Objection. Asked 18 and answered. 19 A. And I can't add anything more 20 to my prior answers. And I believe some 21 of that -- 22 Q. I am going to move to compel? 23 A. -- time frame includes 2009 and 24 later years. 25 MR. WOLKOFF: We will move to</p> <p style="text-align: right;">Page 583</p>

<p>1 compel.</p> <p>2 Q. Do you know that the metadata</p> <p>3 on Plaintiffs' Exhibit 79E reflects that</p> <p>4 it has a date of 2007, sir?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you have any basis to</p> <p>7 contest that the metadata on Plaintiffs'</p> <p>8 Exhibit 79E reflects that it has a date</p> <p>9 of 2007?</p> <p>10 MR. DANIELS: Objection as to</p> <p>11 form.</p> <p>12 A. No, I don't.</p> <p>13 Q. The relevant time period at</p> <p>14 issue here doesn't extend back to 2007,</p> <p>15 it begins February 2009; doesn't it, sir?</p> <p>16 MR. DANIELS: Objection to form.</p> <p>17 Calls for a legal conclusion, as well.</p> <p>18 A. The relevant damage period is</p> <p>19 2009 forward, correct.</p> <p>20 Q. Let me hand you Plaintiffs'</p> <p>21 Exhibit 79F.</p> <p>22 (Plaintiffs' Exhibit 79F</p> <p>23 document Bates stamped YKK0631221,</p> <p>24 previously marked for identification.)</p> <p>25 Q. Do you see that this is an</p> <p style="text-align: right;">Page 584</p>	<p>1 the record, counselors.</p> <p>2 [Off the record.]</p> <p>3 THE VIDEOGRAPHER: We are back</p> <p>4 on the record. The time is 4:43 p.m.</p> <p>5 This is beginning of media labeled</p> <p>6 number 6.</p> <p>7 BY MR. WOLKOFF:</p> <p>8 Q. When we broke, I was looking at</p> <p>9 your footnote 61 in your supplemental</p> <p>10 report, Mr. Donohue, in which you list</p> <p>11 the various marketing flyers that</p> <p>12 plaintiffs base the Lanham Act claim on.</p> <p>13 Do you recollect that, sir?</p> <p>14 A. I do.</p> <p>15 MR. WOLKOFF: I would like to</p> <p>16 have marked as the next exhibit, a</p> <p>17 document Bates stamped YKK0084466</p> <p>18 through YKK0084472.</p> <p>19 THE REPORTER: Exhibit 19.</p> <p>20 (Donohue Exhibit 19, document</p> <p>21 Bates stamped YKK0084466 through</p> <p>22 YKK0084472 was so marked for</p> <p>23 identification, as of this date.)</p> <p>24 Q. Placing in front of you what we</p> <p>25 had marked as Exhibit 19 for</p> <p style="text-align: right;">Page 586</p>
<p>1 e-mail from Mr. Shibata to others at YKK</p> <p>2 dated before the relevant time period,</p> <p>3 October 16th, 2007?</p> <p>4 A. Yes, I see that.</p> <p>5 Q. And do you see there is a flyer</p> <p>6 appended to it, Bates stamped 358274?</p> <p>7 A. I do.</p> <p>8 Q. Now, this is the second flyer</p> <p>9 that you cite in your exhibit, 61, PX</p> <p>10 79F, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you see that it was</p> <p>13 appended to an e-mail back in October of</p> <p>14 2007, so before the relevant time period,</p> <p>15 correct?</p> <p>16 MR. DANIELS: Objection as to</p> <p>17 form.</p> <p>18 A. It was in 2007, yes.</p> <p>19 Q. Okay.</p> <p>20 MR. WOLKOFF: Let's take a break</p> <p>21 for a few minutes, please.</p> <p>22 THE VIDEOGRAPHER: We are now</p> <p>23 going off the record. The time is</p> <p>24 4:31 p.m., and this is the end of the</p> <p>25 media labeled number 5. We are off</p> <p style="text-align: right;">Page 585</p>	<p>1 identification.</p> <p>2 Do you see this is the document</p> <p>3 Bates stamped YKK008466-472 that you</p> <p>4 refer to in your footnote 61, as</p> <p>5 associated with both flyers I showed you</p> <p>6 before the break, PX 79E and PX 79F?</p> <p>7 A. Yes.</p> <p>8 Q. And the date is 2007, so it's</p> <p>9 before the relevant time period, correct?</p> <p>10 A. Yes.</p> <p>11 Q. The relevant time period didn't</p> <p>12 begin until two years later, correct?</p> <p>13 MR. DANIELS: Objection. By</p> <p>14 your definition at the beginning of</p> <p>15 the deposition, otherwise it calls for</p> <p>16 a legal conclusion. You defined the</p> <p>17 relevant time period in the beginning</p> <p>18 of the deposition.</p> <p>19 MR. WOLKOFF: I am using the</p> <p>20 relevant time period that this witness</p> <p>21 used in his reports. I am not</p> <p>22 defining anything.</p> <p>23 MR. DANIELS: We need to be</p> <p>24 clear on this, because I've assumed</p> <p>25 the entire time you used relevant time</p> <p style="text-align: right;">Page 587</p>

<p>1 period as you defined that term at the 2 beginning of the deposition. 3 MR. WOLKOFF: I am using the 4 relevant period as this witness used 5 in his reports. 6 MR. DANIELS: Objection. Calls 7 for a legal conclusion. And I am 8 going to reserve my objection to go 9 back to the entire record every time 10 you used relevant time period. 11 MR. WOLKOFF: You can reserve 12 anything you want. I am using the 13 time period that this witness used, 14 and that's how we defined it with him 15 at the beginning of the deposition. 16 Q. So this is associated with the 17 two flyers, 79E and 79F, 2007, and not 18 from the time period 2009 forward? 19 A. It's before 2009, yes. 20 Q. I am showing you the next flyer 21 that you refer to, so Plaintiffs' Exhibit 22 79T. 23 (Plaintiffs' Exhibit 79T, 24 document Bates stamped YKK0587587 25 previously marked for identification.)</p> <p style="text-align: right;">Page 588</p>	<p>1 MR. DANIELS: Objection to form. 2 Q. It's the same one in your 3 figure 8 on page 24 of your supplemental 4 report, 2008? 5 A. It's the same flyer, but that 6 is a different footnote, but, yes, that 7 looks like a very similar flyer. 8 Q. Okay. And you see that 9 Mr. Scolnick at the University of 10 Michigan, EDU, education, is copied on 11 this e-mail from YKK with the flyer 12 attached to it, correct? 13 A. I do. 14 Q. And then on page 587589 there 15 is an e-mail to YKK on November 10th, 16 2010, from the same Spencer Scolnick, 17 whose e-mail address is at the University 18 of Michigan, correct? 19 A. Yes. 20 Q. And Mr. Scolnick is talking 21 about a project at his college, do you 22 see that, he says at the bottom "Our 23 project," yes? 24 A. Yes. 25 Q. And he talks about the project.</p> <p style="text-align: right;">Page 590</p>
<p>1 Q. This is an e-mail between the 2 University of Michigan, or at least a 3 student there, and YKK. 4 This one is November 11th, 5 2010, correct? 6 A. Correct. 7 Q. And you see that the flyer at 8 issue is appended to 79T with the 9 statement at issue, correct? 10 A. I see that back there, yes. 11 Q. In fact, the flyer is attached 12 to an e-mail string starting on page 13 587590, an e-mail from Alexandra Gray, 14 G-R-A-Y, at YKK to Wendy Chambley, 15 C-H-A-M-B-L-E-Y at YKK with a copy to a 16 Mr. Scolnick, S-C-O-L-N-I-C-K at the 17 University of Michigan, correct? 18 A. Yes. 19 Q. You saw this e-mail string in 20 the flyer that you cited in your report, 21 correct? 22 A. I did. 23 Q. And this flyer is the same one 24 that you cited as being prepared in 2008, 25 correct?</p> <p style="text-align: right;">Page 589</p>	<p>1 He says "We were going to use the zipper 2 on a ski glove. It would enable users to 3 access their fingers without actually 4 taking the glove off." 5 You see that, correct? 6 A. Yes. 7 Q. You cited this e-mail in your 8 report in the footnote? 9 A. I did. 10 Q. This flyer was sent to a 11 student, not a garment manufacturer, 12 correct? 13 A. In this e-mail, yes. 14 Q. And his project that he had 15 asked information about involved a ski 16 glove? 17 A. Apparently. 18 Q. And ski gloves are not at issue 19 here. They are not high-end outerwear. 20 They are not luggage. Correct? 21 A. Well, I guess it could be a 22 high-end outerwear of a type. But it's a 23 ski glove. 24 Q. You didn't include ski gloves 25 as high-end outerwear, you explicitly</p> <p style="text-align: right;">Page 591</p>

<p>1 excluded them; didn't you, sir?</p> <p>2 A. I would have to go back and</p> <p>3 look at the codes again. I included</p> <p>4 high-end outerwear, things of a</p> <p>5 functional nature.</p> <p>6 Q. You don't remember, sir, that</p> <p>7 you excluded gloves from your analysis of</p> <p>8 high-end outerwear?</p> <p>9 A. I need to look back. I don't</p> <p>10 recall focusing on ski gloves at any</p> <p>11 time.</p> <p>12 Q. You don't recall including ski</p> <p>13 gloves as high-end outerwear, do you,</p> <p>14 sir, which is what Mr. Scolnick at the</p> <p>15 University of Michigan is asking about?</p> <p>16 A. I just don't remember that code</p> <p>17 as I sit here. I need to look at my</p> <p>18 exhibit and look at the code here.</p> <p>19 Q. Are you aware that the student</p> <p>20 Spencer Scolnick -- and you would agree</p> <p>21 that a student with a project involving</p> <p>22 zippers on ski gloves is not a garment</p> <p>23 manufacturer; do you agree with that?</p> <p>24 A. I would agree with that.</p> <p>25 Q. So this flyer was sent to a</p> <p style="text-align: right;">Page 592</p>	<p>1 A. Of course, they could sell T5s</p> <p>2 laminated to anyone.</p> <p>3 Q. Including Mr. Scolnick, right?</p> <p>4 A. Correct.</p> <p>5 Q. The next one you cite is 79U.</p> <p>6 Let me show you that one.</p> <p>7 (Plaintiffs' Exhibit 79U,</p> <p>8 document Bates stamped YKK0330626,</p> <p>9 previously marked for identification.)</p> <p>10 Q. This is another one of the</p> <p>11 so-called flyers, together with the</p> <p>12 transmittal e-mail that you cite in the</p> <p>13 footnote 61, in connection with the</p> <p>14 Lanham Act calculation of damages,</p> <p>15 correct?</p> <p>16 A. This is one of the flyers I</p> <p>17 cite, yes.</p> <p>18 Q. And the flyer is attached to an</p> <p>19 e-mail string between YKK and a company</p> <p>20 called California Innovations, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And California Innovations is a</p> <p>23 manufacturer of softsided coolers and</p> <p>24 lunch packs, not a garment manufacturer;</p> <p>25 were you aware of that, sir?</p> <p style="text-align: right;">Page 594</p>
<p>1 student that is not a garment</p> <p>2 manufacturer, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And you cited that in your</p> <p>5 footnote, but you didn't mention that;</p> <p>6 did you?</p> <p>7 A. I did not mention that. I am</p> <p>8 mentioning the flyers, examples of the</p> <p>9 flyers that they were using in the</p> <p>10 day-to-day business.</p> <p>11 Q. Using to send to a student that</p> <p>12 wasn't a garment manufacturer?</p> <p>13 A. That's what they did this time.</p> <p>14 Q. Do you know what Spencer</p> <p>15 Scolnick at the University of Michigan</p> <p>16 actually ordered from YKK, if anything?</p> <p>17 A. No idea.</p> <p>18 Q. Did you know that he ordered</p> <p>19 T5s zippers for his ski gloves?</p> <p>20 A. I did not know that.</p> <p>21 Q. In fact, YKK could sell ski</p> <p>22 gloves with T5s in them to Mr. Scolnick;</p> <p>23 couldn't they?</p> <p>24 MR. DANIELS: Objection as to</p> <p>25 form.</p> <p style="text-align: right;">Page 593</p>	<p>1 A. I was not aware of what they</p> <p>2 specifically create.</p> <p>3 Q. Did you do any research to</p> <p>4 determine whether or not innovations was</p> <p>5 even an outerwear garment manufacturer,</p> <p>6 sir?</p> <p>7 A. No.</p> <p>8 Q. Did you know that California</p> <p>9 Innovations in any event ordered an</p> <p>10 AquaSeal zipper not an AquaGuard zipper</p> <p>11 in the end?</p> <p>12 A. I did not.</p> <p>13 Q. You didn't check up on that</p> <p>14 either; did you?</p> <p>15 A. I did not. It was just an</p> <p>16 example of a flyer.</p> <p>17 Q. Do you see the attachment</p> <p>18 refers to AquaSeal, in Exhibit 79U, on</p> <p>19 the first page, 330626, a zipper not even</p> <p>20 in issue in here?</p> <p>21 MR. DANIELS: Objection to form.</p> <p>22 A. It attaches two attachments,</p> <p>23 the AquaGuard flyer and the AquaSeal</p> <p>24 flyer.</p> <p>25 Q. Do you know that California</p> <p style="text-align: right;">Page 595</p>

<p>1 Innovations chose the AquaSeal zipper to 2 purchase? 3 A. I did not know. 4 Q. In any event, the AquaSeal 5 zipper is not at issue here; is it? 6 A. No, it's not. 7 Q. And California Innovations 8 isn't a high-end garment manufacturer; is 9 it, sir? 10 A. I don't know. You've told me 11 that they don't. But I haven't 12 researched them. 13 Q. Before you cited it in your 14 footnote as an example of YKK circulating 15 a flyer during the relevant time period 16 to a high-end garment manufacturer; don't 17 you think you should have looked at that? 18 MR. DANIELS: Objection as to 19 form. Mischaracterizes the testimony. 20 A. No. It's an example of YKK 21 using the flyers. 22 Q. But using it with someone 23 that's not a high-end outerwear garment 24 manufacturer, right? That's not what you 25 intended to cite it for?</p> <p style="text-align: right;">Page 596</p>	<p>1 copy? 2 Q. This is the last of the flyers 3 that you cite, right? 4 A. Yes. 5 Q. And what is the date on this 6 one? 7 A. 2003 is the e-mail. 8 Q. So how many years is that 9 before the relevant time period? 10 MR. DANIELS: Objection as to 11 form. 12 A. Six years before 2009. 13 Q. Do you cite in your report any 14 use of transmittal by YKK of a marketing 15 flyer with the statement at issue, 16 reflected in Exhibit 18, to any high-end 17 outerwear garment manufacturer or luggage 18 manufacturer or military manufacturer, 19 from February 2009 through September 20 2019, that you're aware of? 21 A. Could you read that back, 22 please? 23 Q. Do you cite in your report any 24 use or transmittal by YKK of a marketing 25 flyer, with the statement at issue</p> <p style="text-align: right;">Page 598</p>
<p>1 A. I intended to cite it as an 2 example of them using the flyer to market 3 the customers. 4 Q. You didn't mean to have people 5 infer that they were using the flyer 6 during the relevant time period to market 7 to high-end outerwear garment 8 manufacturers then; did you? 9 A. I don't understand your 10 question, by citing to it or just my 11 report in general? 12 Q. By citing to it. You weren't 13 implying that by citing to Exhibit 79T, 14 this flyer sent to California 15 Innovations, that innovations was a 16 high-end outerwear garment manufacturer; 17 were you? 18 A. I don't believe I was. I don't 19 say that in my supplemental report. 20 Q. No, you don't. Let me place in 21 front of you Exhibit 79A. 22 (Plaintiffs' Exhibit 79A, 23 document Bates stamped YKK0493633 24 previously marked for identification.) 25 MR. DANIELS: Do you have a</p> <p style="text-align: right;">Page 597</p>	<p>1 reflected in Exhibit 18, to any high-end 2 outerwear garment manufacturer or luggage 3 manufacturer or military manufacturer, 4 used between February 2009 through 5 September 2019 that you're aware of? 6 MR. DANIELS: Objection to the 7 form. 8 A. I thought I cited something 9 from at least 2009, showing that they 10 were using the flyer. 11 Q. Can you identify that, sir? 12 A. I thought it was in that 13 footnote. I don't think we looked at 14 everything in this footnote. 15 MR. WOLKOFF: Well, let's have 16 marked another item from the footnote, 17 so that we do look at everything 18 YKK0011470 to 11480. 19 Take a look at that one. 20 MR. DANIELS: Is that 20? 21 THE REPORTER: 20, yes. 22 (Donohue Exhibit 20, document 23 Bates stamped YKK0011470 to 11484, was 24 so marked for identification, as of 25 this date.)</p> <p style="text-align: right;">Page 599</p>

<p>1 Q. Now, you say this is associated 2 with the flyer PX 79G, PX 79H, PX 79T and 3 PX 79U, correct? 4 A. No, I don't, I don't say that. 5 Q. You say YKK 0011470-484 and 482 6 and then you cite two other -- 7 A. Thank you, that's why I was 8 confused. 9 Q. -- attachments associated with 10 the flyer of 79G, 79H, 79T, and 79U, 11 correct? 12 MR. DANIELS: My exhibit stops 13 at 480. 14 MR. WOLKOFF: Okay. 15 Q. Correct, sir? 16 A. I say that in the footnote and 17 I just don't think we have the last one, 18 11485-487. 19 Q. I will give you that one in a 20 moment. 21 A. Okay. 22 Q. But looking at this one that we 23 marked as Exhibit 20, the date is before 24 the February 2009 through September 2019 25 time period, correct?</p> <p style="text-align: right;">Page 600</p>	<p>1 issue in that picture? 2 A. I can see the red letters, but 3 in this version, I can't see it. 4 Q. Can you see the statement at 5 issue in this flyer, the picture of which 6 is Exhibit 21? 7 A. If you blew it up, you may be 8 able to. Standing in front of it at the 9 show we could. 10 Q. We can't tell from Exhibit 21 11 whether a flyer with the statement at 12 issue, which was reflected in Exhibit 18 13 was used in 2009 at this show or not, we 14 can't read what that flyer is saying, 15 correct? 16 A. I can't read it verbatim, but 17 it looks a lot like that flyer. 18 Q. Read the words that you can 19 read. 20 A. I can read "AquaGuard," and 21 after that it gets pretty blurry. 22 MR. WOLKOFF: Let's have marked 23 as Exhibit 22 for identification Bates 24 stamp YKK0011509 through 11519. 25 (Donohue Exhibit 22, document</p> <p style="text-align: right;">Page 602</p>
<p>1 A. Correct. 2 MR. DANIELS: I am objecting 3 this is not a complete copy of the 4 document that's cited in the footnote 5 and doesn't have the pages that was 6 even cited in the footnote included. 7 MR. WOLKOFF: I would like to 8 have this marked as Exhibit 21 for 9 identification YKK0011485 through 487. 10 (Donohue Exhibit 21, document 11 Bates stamped YKK0011485 through 487 12 was so marked for identification, as 13 of this date.) 14 A. Okay. This isn't the 15 continuation of that, but it's missing a 16 few pages. There is another one from 17 2009. 18 Q. This is a report on a summer 19 outdoor show in July of 2009, correct? 20 A. Correct. 21 Q. It has no flyer attached to it; 22 does it, sir? 23 A. It doesn't. It shows the flyer 24 in the picture. 25 Q. Can you see the statement at</p> <p style="text-align: right;">Page 601</p>	<p>1 Bates stamped YKK0011509 through 2 11519, was so marked for 3 identification, as of this date.) 4 Q. This is a report on an outdoor 5 summer market show in 2009, correct? 6 A. Correct. 7 Q. The flyer at issue -- strike 8 that. 9 And a flyer appears on page 10 11511? 11 A. Correct. 12 Q. Can you read anything in that 13 flyer? 14 A. I can read "AquaGuard 15 water-resistant zippers," and I can see 16 the color card. 17 Q. Can you read anything about 18 that has the statement at issue which is 19 reflected in Exhibit 18 in that flyer as 20 part of Exhibit 22? 21 A. No, I just see the red 22 language, but I can't read it. 23 Q. So we have now looked at all of 24 the citations in your report to YKK 25 flyers, correct?</p> <p style="text-align: right;">Page 603</p>

<p>1 A. I believe so. Maybe, did we 2 look at 62, footnote 62H, but with the 3 exception of that I believe those are the 4 flyers that I cited. 5 Q. Where is 62H cited in 61? 6 A. You said in my report. It's a 7 different footnote. 62 is a different 8 footnote. 9 Q. Are you talking about PX 79H? 10 A. Yes, that would be another 11 flyer, I believe. 12 Q. Okay. So let's have that flyer 13 marked again, it's 79H, so let me just 14 show it to you. 15 (Plaintiffs' Exhibit 79H, 16 document Bates stamped YKK0001644, 17 previously marked for identification.) 18 A. Thank you. 19 Q. Do you know whether this is a 20 flyer actually from 2003, several years 21 before -- actually, strike that. 22 Do you know whether or not 23 Exhibit 79H has a metadata showing that 24 this flyer is prior to February 2009? 25 A. I know that it references</p> <p style="text-align: right;">Page 604</p>	<p>1 flyers. I was asking you about this 2 flyer. 3 79H, you cite it in your 4 supplemental report. Do you know whether 5 or not Plaintiffs' Exhibit 79H was used 6 by YKK, during any portion of the time 7 February 2009 through September 2019; 8 either you know or you don't? 9 A. I am not a fact witness. I 10 wasn't there. All I know is what I've 11 already told you. I wasn't there. So I 12 think that's what you're implying. 13 Q. You cite this as an example of 14 a flyer that was used from February 2009 15 through September of 2019. And I am 16 testing your knowledge of whether or not 17 you really know that, sir. 18 Do you know whether Plaintiffs' 19 Exhibit 79H was used during a time period 20 February 2009 through September 2019? 21 A. All I know is what they said 22 about it and how they used these flyers. 23 I don't know -- 24 Q. Do you know of any statement by 25 YKK, specifically, about Plaintiffs'</p> <p style="text-align: right;">Page 606</p>
<p>1 what's available from 2008 autumn. That 2 is the only date information that I know. 3 Q. So you don't know whether or 4 not this flyer was used from February 5 2009 through September 2019? 6 MR. DANIELS: Objection as to 7 form. 8 A. I only know what I mentioned 9 before about their use of flyers. 10 Q. Do you know whether this 11 specific flyer was used during that time, 12 79H? 13 A. I only know what we went 14 through about YKK's use of these flyers. 15 Q. I am not asking you again about 16 these flyers. I am going to move to 17 compel. 18 I am going you about 79H. Do 19 you know whether or not 79H was used by 20 YKK, from February 2009 forward? 21 A. I only know what I said before, 22 which is what they said about how they 23 used these flyers. That's all I know. 24 Obviously, I wasn't there. 25 Q. I wasn't asking you about these</p> <p style="text-align: right;">Page 605</p>	<p>1 Exhibit 79H? 2 MR. DANIELS: Objection. Asked 3 and answered. 4 A. Mr. Sarumaru just talked about 5 flyers in general. 6 Q. So no? 7 A. He was just talking about 8 flyers like these. That's all I know. 9 Q. When you said "like these," he 10 didn't have 79H in front of him, did he, 11 the way you just pointed to? 12 A. He had a flyer like this 13 marketing flyer. 14 MR. DANIELS: Objection as to 15 form. 16 Q. Do you know anything that YKK 17 ever said about, in specific terms, that 18 is specifically about Plaintiffs' Exhibit 19 79H? 20 MR. DANIELS: Objection. Asked 21 and answered. 22 A. I don't have anything beyond 23 what Mr. Saramaru said and what I cited 24 earlier today. 25 Q. Do you know whether Plaintiffs'</p> <p style="text-align: right;">Page 607</p>

<p>1 Exhibit 79H was used by YKK during the 2 period or a portion of the period of 3 February 2009 through September of 2019? 4 A. Not as a fact witness. I just 5 know that they use them to sell -- the 6 purpose of them is to sell. They used 7 these flyers while selling. They showed 8 the pictures at the outdoor reports. 9 Q. Do you know whether or not any 10 of the flyers that you cite in your 11 supplemental report were actually used by 12 YKK with high-end outerwear garment 13 manufacturers, during the time period of 14 February 2009 through September of 2019? 15 A. I only know what I already 16 said, which is I see them in pictures 17 being used at outdoor shows, including in 18 2008 or '09. There is testimony 19 suggesting that they are used to sell the 20 customers. That's all I know. I don't 21 have any direct knowledge of being at the 22 show or anything like that. 23 Q. Did anybody at YKK say that any 24 of these flyers were used to sell to 25 customers from February 2009 through</p> <p style="text-align: right;">Page 608</p>	<p>1 issue when making its zipper purchasing 2 decisions? 3 A. I haven't talked to the 4 customers. There is no survey about 5 them. I don't know. 6 Q. You did get data from the 13 7 so-called discovery customers, correct? 8 A. I did. 9 Q. And the plaintiffs subpoenaed 10 them, correct? 11 A. They did. 12 Q. Did you or to your knowledge 13 anybody else ever ask those 13 discovery 14 customers if they ever even saw the 15 statement at issue as reflected in 16 Exhibit 18, let alone were confused by 17 it? 18 A. I am not aware of that. 19 Q. Can you point to any document 20 that reflects a customer relying on the 21 statement at issue in deciding whether to 22 purchase a YKK water-resistant zipper? 23 A. When you say any document, I 24 recognize that these are used for 25 marketing, and they are used to market</p> <p style="text-align: right;">Page 610</p>
<p>1 September of 2019? 2 A. Not that directly. But 3 Mr. Sarumaru testified in 2017, and he 4 acknowledged that they used these flyers. 5 Q. He didn't say that they used 6 these flyers from February 2009 to 7 September 2019; did he, sir? 8 A. He didn't say something that 9 specific, no. He just said they used 10 these flyers. 11 Q. Do you know of any surveys that 12 were done by plaintiffs or to your 13 knowledge yourself or anybody else of any 14 YKK customer, to determine if they were 15 misled or confused by the statement at 16 issue, as reflected in Exhibit 18? 17 A. I am not aware of that, no. 18 Q. Do you know of any customer who 19 was misled or confused by the statement 20 at issue? 21 A. I am not aware of that as we 22 sit here, if they were or were not 23 confused. I don't know. 24 Q. Do you know of any actual 25 customer who relied on the statement at</p> <p style="text-align: right;">Page 609</p>	<p>1 the customers and they kept using them. 2 So I assume they thought they were 3 working. But again, I am not providing 4 opinions about this statement. 5 Q. Can you point to any document 6 that reflects a customer relying on the 7 statement at issue reflected in Exhibit 8 18, in deciding whether to purchase a YKK 9 laminated water-resistant zipper? 10 A. When you say any, I just know 11 they were used for marketing for that 12 purpose. That was the point. But I 13 don't have any customer interviews or 14 knowledge of the customer, no. 15 Q. You're not opining here that 16 the statement at issue reflected in 17 Exhibit 18 caused any of the purported 18 damages that you opine about in your 19 report; are you? 20 A. I am not opining on the impact 21 of the statement itself. I am opining on 22 the impact of the excluded market sales 23 due to the wrongful act, whatever they 24 may be. 25 Q. Let me ask you please to answer</p> <p style="text-align: right;">Page 611</p>

<p>1 my question without going on and trying 2 to advocate on the part of the 3 plaintiffs -- 4 MR. DANIELS: Objection. 5 Q. -- which you have been doing 6 throughout the case which is 7 inappropriate. 8 MR. DANIELS: That's a false 9 allegation. Continuing to harass the 10 witness to the end of the day. 11 Q. Let me ask you here. Are you 12 offering any opinion that the statement 13 at issue reflected in Exhibit 18 caused 14 any of the purported damages under the 15 Lanham Act? 16 A. I am not providing opinions 17 about the impact of that statement. 18 Q. So you're not supplying any 19 opinions about causation, correct? 20 A. That is not correct. I am 21 providing opinions about causation with 22 respect to once there is an excluded 23 market sale, I go through what that does. 24 But with respect to the statement I am 25 not providing opinions consistent with my</p> <p style="text-align: right;">Page 612</p>	<p>1 Q. I am not asking about the 2 statement itself. I am asking you about 3 whether or not the statement caused any 4 confusion or damage on the part of any 5 customer in connection with their 6 purchasing decisions. Are you providing 7 any opinion with regard to that? 8 A. I am not providing an opinion 9 about what the statement caused the 10 customer to do. I am providing an 11 opinion about damages due to the excluded 12 market sales. I understand the plaintiff 13 is providing testimony and evidence about 14 the statement itself. 15 Q. Who are they providing their 16 testimony or evidence with? 17 A. Their case, there's legal 18 issues like presumption and things like 19 that, I am not providing opinions on 20 that. 21 Q. Do you express any opinion on 22 what the customers for the YKK laminated 23 zippers would have done or not done if 24 instead of the statement at issue 25 reflected in Exhibit 18, customers were</p> <p style="text-align: right;">Page 614</p>
<p>1 first report about that statement. 2 Q. I am asking you whether or not 3 you're opining that the statement at 4 issue reflected in Donohue Exhibit 18 5 caused any of the purported damages under 6 the Lanham Act that you talk about in 7 your reports? 8 MR. DANIELS: Objection. Asked 9 and answered. 10 A. I am not providing opinions 11 about the impact of the statement. I am 12 providing opinions about, once that 13 statement is wrong or it causes an 14 excluded market sale, the damages due to 15 that. But I am not providing opinions 16 about the statement itself. 17 Q. That's what I am asking you. 18 Are you providing any opinions that the 19 statement at issue reflected in Exhibit 20 18 caused anyone to make a purchasing 21 decision with regard to a YKK laminated 22 zipper or not? 23 A. As I believe it's clear in my 24 reports, but I am not providing an 25 opinion about that statement itself.</p> <p style="text-align: right;">Page 613</p>	<p>1 told that YKK shares the right with 2 Uretek to manufacture, use, sell and 3 import zippers incorporating the 4 water-repellent technology? 5 A. I think this is consistent with 6 our prior exchange. I am not providing 7 opinions about the impact of the 8 statement itself. 9 Q. In terms of United States 10 sales, looking at your supplemental 11 report, paragraph 42, you say that if a 12 YKK customer had a U.S.-based 13 headquarters or even was affiliated with 14 a different customer with a U.S.-based 15 headquarters, you treated, even sales 16 made abroad, as a U.S. sale, correct? 17 MR. DANIELS: Objection as to 18 form. 19 A. Correct. If they had a 20 headquarters, I would include all of 21 their sales in this conduct analysis. 22 Q. This is new, you didn't do that 23 in your prior report, correct? 24 A. This is new. 25 Q. Why did you do it now?</p> <p style="text-align: right;">Page 615</p>


<p>1 A. Because I was asked to provide 2 additional U.S. domestic conduct activity 3 in anticipation of some legal events that 4 may occur.</p> <p>5 Q. Because the judge may exclude 6 evidence of non-USA sales as a sanction. 7 Isn't that what you were asked to do to 8 then include or make sales, U.S. sales 9 that you hadn't made U.S. sales before?</p> <p>10 A. No, I don't think I understand 11 your question. This was in response to 12 the judge's Arbitron decision, 13 recommendation, which was to include 14 additional information about U.S. 15 conduct. So I provided additional U.S. 16 characteristics for these sales.</p> <p>17 Q. Let's take as one example of 18 what you did, Helly Hansen. Helly Hansen 19 is a garment manufacturer that is a 20 Norwegian company, correct?</p> <p>21 A. I believe that's where their 22 ultimate headquarters is.</p> <p>23 Q. You say that Helly Hansen has 24 some relationship with a company located 25 in the United States, correct?</p> <p style="text-align: right;">Page 616</p>	<p>1 separate corporations; aren't they?</p> <p>2 A. They are.</p> <p>3 Q. Do they share the same 4 decision-makers with regard to the 5 purchase of water-resistant zippers; do 6 you know?</p> <p>7 A. I don't know.</p> <p>8 Q. So if someone from the 9 U.S.-based affiliate, not Helly Hansen 10 but the Norwegian company itself, 11 attended one of these trade shows, you 12 treated all of the high-end outerwear and 13 luggage sales to Helly Hansen in Norway 14 as U.S.-based even if the sales were made 15 abroad, correct?</p> <p>16 A. Correct. I included all of 17 Helly Hansen's sales in that calculation.</p> <p>18 Q. Directing your attention to 19 paragraph 43 of your supplemental report. 20 As you indicate here, the trade shows 21 that you refer to have thousands of 22 customers attend them each year, correct?</p> <p>23 A. Yes.</p> <p>24 Q. You say that the Helly Hansen 25 affiliated corporation had one or more</p> <p style="text-align: right;">Page 618</p>
<p>1 A. Yes. I understand it maintains 2 an office in Washington.</p> <p>3 Q. Actually, what you say in 4 paragraph 41 is not that Helly Hansen has 5 any office in Washington, you say it has 6 a United States-based subsidiary, 7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And so a subsidiary corporation 10 of Helly Hansen is the one with the 11 United States-based headquarters, not 12 Helly Hansen itself, correct?</p> <p>13 A. That's where Helly Hansen's 14 U.S. office is.</p> <p>15 Q. Well, that's where the office 16 of its subsidiary is, not Helly Hansen's 17 office, correct?</p> <p>18 A. The ultimate parent entity, 19 correct, is in Norway.</p> <p>20 Q. What's the name of the 21 subsidiary?</p> <p>22 A. Helly Hansen U.S. Inc.</p> <p>23 Q. Do you know the relationship 24 between Helly Hansen U.S., Inc. and Helly 25 Hansen, the Norwegian company? They are</p> <p style="text-align: right;">Page 617</p>	<p>1 employees that visited one or more trade 2 shows, correct?</p> <p>3 A. Correct.</p> <p>4 Q. You don't know whether or not 5 the Helly Hansen affiliated company had 6 one or more employees actually visit the 7 YKK booth among the thousands of 8 exhibitors at those trade shows; do you, 9 sir?</p> <p>10 A. There was very limited records 11 about that. I did include some booth 12 exhibits, and some meetings if they had 13 them. If they occurred, and I found 14 evidence, I included them in my exhibits.</p> <p>15 Q. But you also included as 16 U.S.-based sales, instances where an 17 affiliated company of a foreign company 18 just simply attended a trade show. You 19 had no evidence that they went to the YKK 20 booth, correct?</p> <p>21 A. Well, they were water-resistant 22 customer purchasers and they had been 23 buying from YKK.</p> <p>24 Q. Do you know if they went to the 25 YKK booth, that they actually went to it</p> <p style="text-align: right;">Page 619</p>

<p>1 as opposed to the thousands of other 2 booths? 3 MR. DANIELS: Objection to form. 4 A. Not beyond the understanding 5 that they were a YKK customer and buying 6 zippers. 7 Q. Was Helly Hansen, its U.S. 8 affiliate, a purchaser, to your 9 knowledge, of water-resistant zippers; do 10 you know even know that? 11 A. I don't know that as I sit 12 here. I would have to go and look at the 13 records for that detail. 14 Q. You don't know if Helly 15 Hansen's affiliate based in the United 16 States went to the YKK booth or not 17 during any of these trade shows; do you? 18 A. I would have to go back and 19 look to see if they recorded Helly Hansen 20 at that level. They sometimes did. 21 Q. Do you have any evidence that 22 during the time from February 2009 to 23 December 2019, employees of the Helly 24 Hansen affiliate went to the YKK booth at 25 one of these trade shows and read the</p> <p style="text-align: right;">Page 620</p>	<p>1 A. I wouldn't say no other 2 evidence. Again, I mentioned the purpose 3 of the flyers is marketing the customers, 4 and these are water-resistant customers. 5 And Mr. Sarumaru acknowledged that they 6 used these flyers to market, so I have 7 that. But you're right, I don't have -- 8 I wasn't at the show. I don't have a 9 picture of the booth with the picture on 10 it in 2015 or something like that. 11 Q. So if an employee of the Helly 12 Hansen affiliate went to a trade show -- 13 strike that. 14 So an employee of the Helly 15 Hansen, a U.S.-based affiliate would have 16 to go to the trade show, go to YKK's 17 booth, see the flyer, assuming one even 18 existed with the statement at issue from 19 2009 on, read the statement at issue 20 within the flyer, and communicated the 21 statement to the Helly Hansen employee 22 decision-makers abroad, in order for 23 those decision-makers abroad to even know 24 about the statement, let alone be 25 confused by it, what I am referring is</p> <p style="text-align: right;">Page 622</p>
<p>1 statement at issue? 2 A. Only the inference from them 3 being a customer and them being at the 4 trade shows, and Mr. Sarumaru's testimony 5 that they were using these flyers to 6 market the customer and they were a 7 customer. 8 Q. Do you have any evidence that 9 there was even a flyer with the statement 10 at issue at YKK's booth in 2010, 2011, 11 2012, going forward to February 2019? 12 A. I only had a few pictures that 13 suggested there was a flyer at the booth. 14 Q. The pictures you had were from 15 2009, correct? 16 A. Correct. And I was going to 17 finish and explain that they were from 18 2009. I don't believe I have a picture 19 from the later years. 20 Q. And you have no other evidence 21 of flyers being distributed from 2010 on 22 by YKK -- 23 MR. DANIELS: Objection. Asked 24 and answered. 25 Q. -- correct?</p> <p style="text-align: right;">Page 621</p>	<p>1 the statement reflected in Exhibit 18, 2 correct, under your analysis? 3 MR. DANIELS: Objection as to 4 form. 5 A. I guess. I don't know who they 6 communicated the flyers to. I think I've 7 mentioned that to you. They would have 8 to see it, if it was used for marketing. 9 They were buying these goods, and YKK is 10 using these flyers to sell the goods. So 11 I assume someone is seeing these flyers 12 to make that decision. 13 Q. So an employee of the Helly 14 Hansen affiliate in the United States, 15 would have had to go to the trade show, 16 go to YKK's booth, seen the flyer, if one 17 even existed, with the statement at issue 18 during the time period of February 2009 19 forward, read the statement at issue 20 within the flyer, communicated the 21 statement at issue to the Helly Hansen 22 decision-makers abroad. And the Helly 23 Hansen decision-makers abroad would have 24 to have been confused by the statement, 25 according to your analysis, correct?</p> <p style="text-align: right;">Page 623</p>

<p>1 A. Legally, I can't tell you who, 2 at what level, needs to be confused. I 3 don't know how that plays into whatever 4 the decision might look like. 5 Q. You don't know whether or not 6 these sales that you included as 7 U.S.-based sales, were made by Helly 8 Hansen decision-makers abroad who had 9 never seen the statement; do you? 10 A. I only know -- I don't know and 11 I can't speak to within Helly Hansen at 12 what level they were confused and what is 13 required. 14 Q. Can you even speak to Helly 15 Hansen decision-makers abroad even seeing 16 this statement at issue? 17 A. Again, I don't, I only have 18 evidence that we went through earlier 19 today. I don't have evidence within 20 Helly Hansen about who saw the flyer. 21 Q. Do you have evidence of any of 22 these foreign entities whose sales you 23 included as U.S.-based sales seeing the 24 statement at issue that's reflected in 25 Exhibit 18?</p> <p style="text-align: right;">Page 624</p>	<p>1 with the United States company, correct? 2 A. I included -- so to make sure I 3 understand your question, I included all 4 the sales for Helly Hansen. 5 Q. But you also did the same thing 6 as you did for Helly Hansen with these 7 other customers in connection with, now 8 including sales that were made outside of 9 the United States as U.S. sales, correct? 10 A. Yes, because I already did the 11 import analysis. This was a different 12 analysis to look at whether or not they 13 had a headquarters here. 14 Q. Not just a headquarters, but if 15 they had an office, if they had a 16 subsidiary, if they had an affiliate. So 17 you included all of the sales to the 18 foreign corporations that were foreign 19 sales as U.S. sales in that event, 20 correct? 21 A. I did, as I explain in my 22 report. 23 Q. And you don't know whether the 24 decision-makers at the foreign 25 corporations ever saw the statement at</p> <p style="text-align: right;">Page 626</p>
<p>1 A. The evidence I have I presented 2 in my supplemental report, showing that 3 the flyers used, to market to these 4 customers, they are customers, they were 5 at the shows, the flyer was used at the 6 booth. 7 Q. Actually, you include 8 subsidiaries and affiliates. You include 9 sales made to the foreign entities, just 10 on the basis that they had some office in 11 the United States or some affiliate in 12 the United States, correct? 13 A. In that calculation, I was 14 asked to include the headquarters as one 15 potential domestic conduct, yes. 16 Q. Who asked you to do that? 17 A. I've worked with counsel to 18 understand the Arbitron decision and what 19 might be necessary and that was one way 20 to look at U.S. conduct. 21 Q. So you included as U.S.-based 22 sales, sales that were actually made to 23 foreign corporations and that were made 24 abroad if the foreign corporation had an 25 office or an affiliate or some connection</p> <p style="text-align: right;">Page 625</p>	<p>1 issue, ever attended a trade show, 2 correct? 3 MR. DANIELS: Objection. Asked 4 and answered. 5 A. I don't have granular 6 information about within Helly Hansen who 7 attended the trade show, no. 8 Q. And the same is true of all the 9 corporations whose foreign transactions 10 were included as U.S. sales, correct -- 11 A. Correct. 12 Q. -- not just Helly Hansen? 13 A. I just know Helly Hansen and 14 the other examples attended, I don't have 15 detail beyond that. 16 Q. And you actually don't have any 17 information that the foreign 18 corporations, who engaged in foreign 19 transactions with regard to 20 water-resistant zippers, themselves 21 attended any trade shows from February 22 2009 through September 2019, yet you 23 included those foreign transactions as 24 U.S.-based sales, correct? 25 A. In that calculation I included</p> <p style="text-align: right;">Page 627</p>

<p>1 all of the company's sales, if they had a 2 U.S. presence. 3 Q. So the answer is yes? 4 A. Yes, I included all of the 5 sales. 6 MR. WOLKOFF: Let's take a break 7 for a moment. Mr. Daniels objected to 8 a document being incomplete, and I 9 would like to have the complete 10 document marked. 11 THE VIDEOGRAPHER: We are now 12 going off the record. The time is 13 5:33 p.m., this is the end of media 14 label number 6. 15 [Off the record.] 16 THE VIDEOGRAPHER: We are back 17 on the record. The time is 5:34 p.m. 18 BY MR. WOLKOFF: 19 Q. Let me place in front of you DX 20 971. 21 (Defendants' Exhibit 971, 22 document Bates stamped YKK0235140, 23 previously marked for identification.) 24 Q. You see this is an e-mail 25 string involving this same Michigan</p> <p style="text-align: right;">Page 628</p>	<p>1 document Bates stamped YKK0331053, 2 previously marked for identification.) 3 Q. Do you see this is an e-mail 4 string with a customer California 5 Innovations that we looked at earlier, 6 that you talked about in footnote 61 in 7 your supplemental report? 8 A. Yes. 9 Q. Do you see on the first page of 10 Exhibit 972, Terry McCullough, YKK asked 11 the Innovations representative if he had 12 any feedback on the AquaSeal zipper 13 samples? 14 A. I see that. 15 Q. AquaSeal zippers are not at 16 issue in this case; are they? 17 A. They are not. 18 MR. WOLKOFF: Off the record for 19 a minute while we get that document 20 that Mr. Daniels objected to as 21 incomplete. 22 THE VIDEOGRAPHER: We are now 23 going off the record. The time is 24 5:36 p.m. 25 [Off the record.]</p> <p style="text-align: right;">Page 630</p>
<p>1 University student that we looked at 2 before in his correspondence with YKK 3 about wanting zippers for ski gloves, 4 correct? 5 A. Yes. 6 Q. Let me direct your attention to 7 page 235144. You see in the middle of 8 that page, Mr. Scolnick sent an e-mail to 9 YKK ordering the T5, correct? 10 A. Yes, I see them asking if you 11 have the T5. 12 Q. So this wouldn't violate any 13 exclusive license agreement, would it, or 14 the Lanham Act or anything else, YKK was 15 entitled to sell T5s to customers, 16 correct? 17 MR. DANIELS: Objection. Calls 18 for a legal conclusion. 19 A. Having them laminated by 20 Uretex, correct. 21 Q. And T5s are laminated by 22 Uretex, right? 23 A. Yes. 24 Q. Let me show you DX 972. 25 (Defendants' Exhibit 972,</p> <p style="text-align: right;">Page 629</p>	<p>1 THE VIDEOGRAPHER: We are back 2 on the record. The time is 5:39 p.m. 3 BY MR. WOLKOFF: 4 Q. I am going to place in front of 5 you a document Bates stamped YKK11481 6 through 11484. 7 You see these are the rest of 8 the pages of what we marked as Exhibit 20 9 as cited in your Exhibit 61 with respect 10 to marketing flyers? 11 A. Yes. 12 Q. And it's still the case, even 13 with adding these pages to make the 14 document complete, as you cited in 15 footnote 61 of your supplemental report, 16 that this refers to a flyer that's prior 17 to February 2009 through September 2019, 18 correct? 19 A. The report is still from 2008. 20 The picture shows the flyer. But it's 21 still from 2008. 22 Q. Which is before the time period 23 you looked at, correct? 24 A. It's before the 2009 time 25 period, yes.</p> <p style="text-align: right;">Page 631</p>

<p>1 MR. WOLKOFF: I don't have</p> <p>2 anything further at this time. Thank</p> <p>3 you.</p> <p>4 MR. DANIELS: Okay. I have no</p> <p>5 questions of the witness.</p> <p>6 THE VIDEOGRAPHER: We are now</p> <p>7 going off the record. The time is</p> <p>8 5:41 p.m.</p> <p>9 This is the end of this</p> <p>10 videotaped deposition that is made up</p> <p>11 of seven medias and they will be kept</p> <p>12 by Veritext Texas. We are off the</p> <p>13 record.</p> <p>14 [Off the record.]</p> <p>15</p> <p>16 (Whereupon, at 5:41 p.m., the</p> <p>17 deposition was concluded.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 632</p>	<p>1 ----- I N D E X -----</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 JAMES J DONOHUE Mr. Wolkoff 263</p> <p>4</p> <p>5 ----- INFORMATION REQUESTS -----</p> <p>6 REQUESTS: 400</p> <p>7</p> <p>8</p> <p>9 ----- EXHIBITS -----</p> <p>10 DONOHUE FOR ID.</p> <p>11 EXH 12, supplemental expert report 263</p> <p>12 submitted on March 28th, 2023</p> <p>13 EXH 13, jury's verdict and 433</p> <p>14 definition of the meaning of</p> <p>15 "high-end outerwear"</p> <p>16 EXH 14, Memorandum Opinion and Order 468</p> <p>17 By Judge Woods</p> <p>18 EXH 15, amended complaint 485</p> <p>19 EXH 16, Mr Cockrell's supplemental report 497</p> <p>20 EXH 17, example of the summaries from the 511</p> <p>21 discovery clients</p> <p>22 EXH 18, statement by YKK 570</p> <p>23 EXH 19, document Bates stamp YKK0084466 586</p> <p>24 through YKK0084472</p> <p>25</p> <p style="text-align: right;">Page 634</p>
<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I have read the foregoing</p> <p>4 transcript of my deposition and except</p> <p>5 for any corrections or changes noted on</p> <p>6 the errata sheet, I hereby subscribe to</p> <p>7 the transcript as an accurate record of</p> <p>8 the statements made by me.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 JAMES J. DONOHUE</p> <p>13</p> <p>14</p> <p>15 SUBSCRIBED AND SWORN before</p> <p>16 and to me this ____ day</p> <p>17 of _____, 2023.</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 NOTARY PUBLIC</p> <p>22 My Commission Expires:</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 633</p>	<p>1 INDEX OF (Cont'd)</p> <p>2 ----- EXHIBITS -----</p> <p>3 DONOHUE FOR ID.</p> <p>4 EXH 20, document Bates stamped 600</p> <p>5 YKK0011470 to 11484</p> <p>6 EXH 21, document Bates stamped 601</p> <p>7 YKK0011485 through 487</p> <p>8 EXH 22, document Bates stamped 603</p> <p>9 YKK0011509 through 11519</p> <p>10</p> <p>11 DEFENDANTS' FOR ID</p> <p>12 EXH 645, document Bates stamped</p> <p>13 YKK0703208 was previously marked 310</p> <p>14 EXH 56, document Bates stamped 324</p> <p>15 YKK0044515 previously marked</p> <p>16 EXH 86, document Bates stamped 330</p> <p>17 YKK0679784, previously marked</p> <p>18 EXH 335, document Bates stamped 359</p> <p>19 YKK0698140, previously marked</p> <p>20 EXH 353, document Bates stamped 367</p> <p>21 YKK0016715, previously marked</p> <p>22 EXH 364, document Bates stamped 375</p> <p>23 YKK0258349, previously marked</p> <p>24 EXH 533, document Bates stamped 377</p> <p>25 YKK0601288, previously marked</p> <p style="text-align: right;">Page 635</p>

<p>1 INDEX OF (Cont'd)</p> <p>2 ----- EXHIBITS -----</p> <p>3 DEFENDANTS' FOR ID</p> <p>4 EXH 509, document Bates stamped 380</p> <p>5 YKK0004623, previously marked</p> <p>6 EXH 460, document Bates stamped 384</p> <p>7 YKK0196058, previously marked</p> <p>8 EXH 462, document Bates stamped 389</p> <p>9 YKK0407549, previously marked</p> <p>10 EXH 458, document Bates stamped 400</p> <p>11 YKK0152695, previously marked</p> <p>12 EXH 575, document Bates stamped 408</p> <p>13 YKK0267341, previously marked</p> <p>14 EXH 44, document Bates stamped 418</p> <p>15 YKK0703047, previously marked</p> <p>16 EXH 392, document Bates stamped 427</p> <p>17 YKK016984, previously marked</p> <p>18 EXH 639, article from a publication 447</p> <p>19 called Gear Junkie dated January</p> <p>20 14, 2014 previously marked</p> <p>21 EXH 664, document Bates stamped 448</p> <p>22 YKK0011534, previously marked</p> <p>23 EXH 278, document Bates stamped 453</p> <p>24 YKK0484616, previously marked</p> <p>25</p> <p style="text-align: right;">Page 636</p>	<p>1 INDEX OF (Cont'd)</p> <p>2 ----- EXHIBITS -----</p> <p>3 PLAINTIFFS' FOR ID</p> <p>4 EXH 363, document Bates stamped</p> <p>5 YKK0060562 previously marked 549</p> <p>6 EXH 79E, document Bates stamped 577</p> <p>7 YKK0010318, previously marked</p> <p>8 EXH 79F, document Bates stamped 584</p> <p>9 YKK0631221, previously marked</p> <p>10 EXH 79T, document Bates stamped 588</p> <p>11 YKK0587587 previously marked</p> <p>12 EXH 79U, document Bates stamped 594</p> <p>13 YKK0330626, previously marked</p> <p>14 EXH 79A, document Bates stamped 597</p> <p>15 YKK0493633 previously marked</p> <p>16 EXH 79H, document Bates stamped 604</p> <p>17 YKK0001644, previously marked</p> <p>18</p> <p>19 (EXHIBIT SHARE)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 638</p>
<p>1 INDEX OF (Cont'd)</p> <p>2 ----- EXHIBITS -----</p> <p>3 DEFENDANTS' FOR ID</p> <p>4 EXH 295, document Bates stamped</p> <p>5 YKK0627414 previously marked</p> <p>6 EXH 141, document Bates stamped 548</p> <p>7 YKK0050675, previously marked</p> <p>8 EXH 171, document Bates stamped 550</p> <p>9 YKK0060562 previously marked</p> <p>10 EXH 586, document Bates stamped 563</p> <p>11 YKK0713410, previously marked</p> <p>12 EXH 611, document Bates stamped 567</p> <p>13 YKK0004615, previously marked</p> <p>14 EXH 660, document Bates stamped 568</p> <p>15 YKK0714527 previously marked</p> <p>16 EXH 971, document Bates stamped 629</p> <p>17 YKK0235140, previously marked</p> <p>18 EXH 972, document Bates stamped 630</p> <p>19 YKK0331053, previously marked</p> <p>20</p> <p>21</p> <p>22</p> <p>23 (Index continued on the following page.)</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 637</p>	<p>1 CERTIFICATION</p> <p>2</p> <p>3 I, DAWN MATERA, a Notary Public for</p> <p>4 and within the State of New York, do</p> <p>5 hereby certify:</p> <p>6 That the witness whose testimony as</p> <p>7 herein set forth, was duly sworn by me;</p> <p>8 and that the within transcript is a true</p> <p>9 record of the testimony given by said</p> <p>10 witness.</p> <p>11 I further certify that I am not</p> <p>12 related to any of the parties to this</p> <p>13 action by blood or marriage, and that I</p> <p>14 am in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have hereunto</p> <p>17 set my hand this 23rd day of May, 2023.</p> <p>18</p> <p>19 </p> <p>20 DAWN MATERA</p> <p>21</p> <p>22 * * *</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 639</p>

1 ERRATA SHEET
 VERITEXT LEGAL SOLUTIONS
 2
 3 Au New Haven LLC v YKK Corporation et al.
 4 DATE OF DEPOSITION: May 18, 2023
 NAME OF WITNESS: JAMES J. DONOHUE

5	PAGE/LINE(S)/	CHANGE	REASON
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18 JAMES J. DONOHUE
 19 SUBSCRIBED AND SWORN TO
 BEFORE ME THIS _____ DAY
 20 OF _____, 2023.

21 _____
 NOTARY PUBLIC

22 MY COMMISSION EXPIRES _____

23
 24
 25

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